

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3
4
5 FUSION ORTHOPEDICS, LLC,

6 Petitioner,

7 v.

8 EXTREMITY MEDICAL, LLC,

9 Patent Owner

)
)
) Case IPR2023-00894

) U. S. Patent No. 11,298,166
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16 REMOTE DEPOSITION OF LEONEL DOMINGUEZ

17 Thursday, January 18, 2024

18 Palm Coast, Florida

19
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22
23
24 Reporter: Michael D. O'Connor, RMR, CRC, CRR

25
Extremity Medical, LLC

EXHIBIT 2013

Fusion Orthopedics v. Extremity Medical

Case IPR2023-00894

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Thursday, January 18, 2024

10:08 a.m.

REMOTE DEPOSITION OF LEONEL

DOMINGUEZ, held in Palm Coast, Florida,

pursuant to notice, before Michael D.

O'Connor, RMR, CRC, CRR, and Notary Public

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2

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20

21 Also Present: Samuel Rocereta

22 Jennifer Brinkerhoff, Esq.,

23 Fusion Orthopedics, LLC

24

25 * * * * *

1 I N D E X

2 Deposition of: Page
3 LEONEL DOMINGUEZ
4

5 * * * * *

6
7 E X H I B I T S

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10	Exhibit 1002	Declaration of Leonel	13
11		Dominguez	
12	Exhibit 1004	French Patent No.	62
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1 PROCEEDINGS

2

3 LEONEL DOMINGUEZ

4

5 having been satisfactorily identified by the
6 production of his driver's license, and duly
7 sworn by the Notary Public, was examined and
8 testified as follows:

9

10 EXAMINATION

10:08:48 11 BY MR. LINDENBAUM:

10:08:48 12 Q. Good morning, Mr. Dominguez.

10:08:55 13 A. Good morning, Mr. Lindenbaum.

10:08:58 14 Q. Could you please state your full
10:08:59 15 name for the record.

10:09:00 16 A. Leonel Dominguez.

10:09:01 17 Q. Okay. Mr. Dominguez, I deposed
10:09:12 18 you in June of 2023 for the District Court case
10:09:19 19 between Extremity Medical and Fusion; that's
10:09:19 20 correct?

10:09:19 21 A. Yes.

10:09:19 22 Q. So I'm just going to go over some
10:09:22 23 preliminary matters before I begin. A lot of
10:09:25 24 this will sound familiar from that deposition.

10:09:27 25 My name, again, is David

10:09:30 1 Lindenbaum. I represent Extremity Medical.
10:09:33 2 I'll be taking your deposition today. You have
10:09:35 3 been administered an oath. Pursuant to that
10:09:37 4 oath you're obligated to tell the truth during
10:09:40 5 the deposition.

10:09:40 6 Do you understand?

10:09:41 7 A. Yes.

10:09:41 8 Q. Are you taking any medication
10:09:48 9 today that would prevent you from understanding
10:09:50 10 my questions or answering my questions fully
10:09:52 11 and truthfully?

10:09:53 12 A. No.

10:09:53 13 Q. Have you been deposed since your
10:09:57 14 deposition in June 2023?

10:09:59 15 A. No.

10:09:59 16 Q. So I will be asking questions
10:10:06 17 during the deposition, and my questions and
10:10:08 18 your answers will be recorded by the court
10:10:10 19 reporter. The court reporter is going to try
10:10:12 20 to record everything that's said during the
10:10:13 21 deposition, so we need to make sure to talk one
10:10:16 22 person at a time. I will endeavor to wait
10:10:18 23 until you complete your answer before asking
10:10:22 24 the next question, and I ask you to wait until
10:10:24 25 I finish my question before answering my

10:10:27 1 question. Okay?

10:10:28 2 A. Okay.

10:10:28 3 Q. All right. Also because the court

10:10:32 4 reporter is creating a written record of the

10:10:33 5 deposition, I need you to give verbal answers

10:10:36 6 to the questions, so if you shake your head or

10:10:39 7 nod in response to a question, I will ask you

10:10:41 8 to provide a verbal response as well. Okay?

10:10:44 9 A. Okay.

10:10:45 10 Q. Okay. If I ask a question that

10:10:48 11 you do not understand, please let me know, and

10:10:51 12 I will try to clarify the question. Okay?

10:10:53 13 A. Okay.

10:10:54 14 Q. All right. As should be indicated

10:10:58 15 on the transcript, but for the record, we're

10:11:01 16 taking this deposition remotely by Zoom, and if

10:11:04 17 for some reason the connection is bad or you

10:11:08 18 don't hear a full question, please let me know,

10:11:10 19 and I will seek to fix the technical problem,

10:11:13 20 and make sure you hear and understand the

10:11:16 21 question. Okay?

10:11:16 22 A. Okay.

10:11:17 23 Q. The deposition is not intended to

10:11:21 24 be a marathon session. If at any time you need

10:11:24 25 a break, please let me know. I just ask that

10:11:27 1 if a question is pending or a series of
10:11:29 2 questions is pending, that you answer the
10:11:30 3 question before taking the break. Okay?

10:11:32 4 A. Okay.

10:11:33 5 Q. All right.

10:11:35 6 MR. LINDENBAUM: Michael, that
10:11:36 7 goes for you as well. If at any time
10:11:38 8 you need a break during the deposition,
10:11:41 9 let me know, and we can take a break.

10:11:46 10 COURT REPORTER: Thank you.

10:11:47 11 Q. Mr. Dominguez, do you understand
10:11:54 12 you're not supposed to communicate with the
10:11:56 13 attorneys about the substance of your testimony
10:11:58 14 while I'm asking questions today?

10:11:59 15 A. Yes.

10:12:00 16 Q. Do you have any papers or items in
10:12:02 17 front of you?

10:12:07 18 A. Yes, I do.

10:12:08 19 Q. What do you have in front of you?

10:12:10 20 A. I have a paper copy of my IPR, my
10:12:18 21 expert declaration. It's called Claims 1
10:12:25 22 through 15 of U.S. Patent 11,298,166.

10:12:26 23 Q. Anything else?

10:12:29 24 A. I have a paper copy of the
10:12:30 25 declaration that I provided for the

10:12:32 1 construction brief back last year that we
 10:12:36 2 discussed.
 10:12:36 3 Q. All right. Do you have anything
 10:12:38 4 else?
 10:12:38 5 A. That's all.
 10:12:40 6 Q. Okay. I'm going to ask you to,
 10:12:46 7 for the moment, put those papers aside.
 10:12:51 8 A. Okay. Coincidentally, the package
 10:12:55 9 of documents, paper copies of all the exhibits,
 10:13:00 10 are in Orlando on route to Palm Coast. They
 10:13:06 11 have not arrived yet. They will later today.
 10:13:08 12 Q. Okay. Great. Other than the Zoom
 10:13:14 13 window that we're using to communicate for the
 10:13:16 14 deposition, do you have any other windows open
 10:13:18 15 on your computer?
 10:13:19 16 A. No, I do not, other than my
 10:13:22 17 Outlook e-mail is open.
 10:13:31 18 Q. Are you able to close your Outlook
 10:13:33 19 e-mail?
 10:13:33 20 A. Yes. Done.
 10:13:42 21 Q. Thank you. So is the only window
 10:13:45 22 you have open now on your computer the Zoom
 10:13:47 23 window?
 10:13:48 24 A. Yes.
 10:13:48 25 Q. All right. Okay. Is there anyone

10:13:51 1 else in the room with you?

10:13:51 2 A. In my house is my wife, and she's

10:13:56 3 somewhere around, but not in this room, no.

10:14:00 4 Q. All right. Is she an engineer?

10:14:03 5 A. Actually, she is.

10:14:06 6 Q. Is she a mechanical engineer?

10:14:10 7 A. No.

10:14:11 8 Q. What type of engineer is she?

10:14:13 9 A. Industrial.

10:14:14 10 Q. Industrial engineer. Okay. Has

10:14:21 11 she helped you with this case?

10:14:22 12 A. No, sir.

10:14:23 13 Q. Okay. Have you consulted with her

10:14:27 14 about any of your opinions in this case?

10:14:28 15 A. No, sir.

10:14:29 16 Q. Did you do anything to prepare for

10:14:31 17 this deposition?

10:14:32 18 A. I read the exhibits that I

10:14:35 19 prepared in the past few days. But, you know,

10:14:39 20 I prepared those exhibits a while ago, so I

10:14:45 21 refreshed myself on those exhibits.

10:14:46 22 Q. When you say "exhibits," do you

10:14:48 23 include your declaration?

10:14:50 24 A. My declaration. Primarily my

10:14:52 25 declaration.

10:14:53 1 Q. Did you review also any of the
10:14:54 2 exhibits that are cited in your declaration?

10:14:57 3 A. Yes, with the exception of three
10:14:59 4 exhibits which I did not -- I inadvertently did
10:15:03 5 not review or during my declaration, which are
10:15:09 6 the last three exhibits, I believe there were
10:15:13 7 10,010, 10,011, 10,012, those were primarily
10:15:18 8 letters.

10:15:19 9 I didn't view those exhibits at
10:15:22 10 the time of my declaration. However, I did
10:15:23 11 read those and analyze them on Monday of this
10:15:25 12 week, and found the contents of those three
10:15:30 13 exhibits not to have any effect on my
10:15:34 14 declaration.

10:15:34 15 Q. Did you talk with anyone to
10:15:39 16 prepare for your deposition?

10:15:41 17 A. I spoke with counsel, Fusion's
10:15:44 18 counsel.

10:15:44 19 Q. Who is that?

10:15:45 20 A. I spoke with both Scott Kamholz
10:15:48 21 and Jennifer Brinkerhoff.

10:15:54 22 Q. Did you speak with anyone else to
10:15:56 23 prepare for your deposition?

10:15:57 24 A. Sam was part of the group, but he
10:16:06 25 didn't contribute anything to my preparation.

10:16:08 1 Q. Okay. Did you speak to anyone
10:16:10 2 else to prepare for your deposition?

10:16:11 3 A. No, sir.

10:16:17 4 Q. Did you speak to anyone else about
10:16:19 5 anything about your deposition?

10:16:26 6 A. Not that I can recall.

10:16:28 7 Q. Did you review the transcript from
10:16:40 8 the deposition that -- the transcript from when
10:16:43 9 you were deposed in June for the District Court
10:16:52 10 case between Extremity Medical and Fusion?

10:17:01 11 I'm sorry, Mr. Dominguez, did you
10:17:02 12 review the transcript from the deposition that
10:17:05 13 you gave in June 2023 for the case between
10:17:09 14 Extremity Medical and Fusion?

10:17:12 15 A. Yes. I reviewed parts of that
10:17:14 16 transcript.

10:17:14 17 Q. Okay. All right. So I know you
10:17:26 18 said that you have your declaration in front of
10:17:28 19 you or you had it. I'd like to just -- I'd
10:17:42 20 like to pull up a -- I'll put a version in the
10:17:45 21 chat so we know we're looking at the same
10:17:50 22 thing. Okay? Hold on.

10:18:08 23 You should see a document, if you
10:18:10 24 go to the chat section of the Zoom. Mr.
10:18:58 25 Dominguez, let me know if you can see Exhibit

10:19:01 1 1002 that I uploaded to the chat?

10:19:01 2 (Document marked as Exhibit 1002

10:19:25 3 for identification)

10:19:25 4 A. Does it require me to save the

10:19:27 5 file?

10:19:28 6 Q. I don't think so. You just open

10:19:30 7 it. It doesn't require you to save. I just

10:19:40 8 clicked on it and it just opened.

10:19:42 9 A. It's not doing that for me. When

10:19:45 10 I click on it, it goes immediately to try to

10:19:48 11 save the PDF in a folder where I can view it,

10:19:52 12 if you want me to do that. I don't know what

10:19:54 13 else to do. I looked at all the available

10:19:57 14 icons. There's a download, there's a reply,

10:20:01 15 reactions.

10:20:04 16 Q. So it did save to your computer?

10:20:07 17 A. I haven't saved it yet, but I can

10:20:12 18 if you want me to.

10:20:13 19 Q. Okay. Sure. Why don't you save

10:20:17 20 it to your computer if that's the only way to

10:20:19 21 look at it?

10:20:20 22 A. 1002. Okay.

10:21:32 23 Q. Do you have Exhibit 1002 open in

10:21:34 24 front of you on your computer?

10:21:36 25 A. I do.

10:21:36 1 Q. If you turn to the bottom right
10:21:38 2 corner on the first page it says "Fusion
10:21:42 3 Orthopedics LLC Exhibit 1002. "
10:21:44 4 Do you see that?
10:21:45 5 A. Yes.
10:21:46 6 Q. And the title of the document is
10:21:53 7 "Declaration of Leonel Dominguez in Support of
10:21:56 8 Petitioner, Fusion Orthopedic LLC's Petition
10:22:00 9 For Inter Partes Review of Claims 1 through 15
10:22:05 10 of U.S. Patent No. 11,298,166. "
10:22:10 11 Do you see that?
10:22:13 12 A. Yes.
10:22:14 13 Q. Did you prepare this declaration?
10:22:16 14 A. Yes.
10:22:16 15 Q. Was it prepared in support of an
10:22:19 16 inter partes review petition?
10:22:23 17 A. That is my understanding.
10:22:24 18 Q. Okay. If I refer to inter partes
10:22:27 19 review as IPR, will you understand what I'm
10:22:30 20 referring to?
10:22:30 21 A. Yes.
10:22:31 22 Q. Is it your understanding that
10:22:37 23 Fusion Orthopedics filed an IPR petition along
10:22:39 24 with this declaration?
10:22:40 25 A. Can you repeat the question?

10:22:50 1 Q. Yes. Is it your understanding
 10:22:51 2 that Fusion Orthopedics filed an IPR petition
 10:22:54 3 along with this declaration?
 10:22:56 4 A. Not that I can recall, but
 10:23:01 5 whatever the process is.
 10:23:02 6 Q. Okay. If we turn close to the end
 10:23:08 7 of the document, which would be on Page 85,
 10:23:11 8 which should be the last page of the
 10:23:13 9 declaration, let me know when you get to that
 10:23:21 10 page.
 10:23:22 11 A. Yes.
 10:23:23 12 Q. Do you see an electronic signature
 10:23:25 13 there?
 10:23:25 14 A. Yes, I do.
 10:23:26 15 Q. That's your name, correct?
 10:23:27 16 A. Correct.
 10:23:28 17 Q. Do you know who entered the
 10:23:32 18 electronic signature on that page?
 10:23:34 19 A. I did.
 10:23:35 20 Q. Okay. During the deposition, I
 10:23:38 21 will refer to this document as your
 10:23:40 22 declaration. Okay?
 10:23:40 23 A. Okay.
 10:23:41 24 Q. If we go back to the beginning of
 10:23:49 25 the declaration, and if you turn to the table

10:23:51 1 of contents, which begins on Page 2, let me
10:24:02 2 know when you're there.

10:24:03 3 A. Yes.

10:24:04 4 Q. If you see Roman numeral IV, which
10:24:06 5 is the fourth line down in the table of
10:24:09 6 contents. It says, "The '166 patent."

10:24:13 7 Do you see that?

10:24:13 8 A. Yes.

10:24:13 9 Q. And if we look back on the cover,
10:24:18 10 you'll see again that this declaration concerns
10:24:20 11 Patent 11,298,166.

10:24:22 12 Do you see that?

10:24:23 13 A. Yes.

10:24:23 14 Q. And if I refer to that patent,
10:24:27 15 which is U.S. Patent No. 11,298,166, as the
10:24:34 16 '166 patent, will you know what I'm referring
10:24:35 17 to?

10:24:36 18 A. Yes.

10:24:37 19 Q. All right. So why don't we pull
10:24:39 20 up that patent now, so I'm going to put that
10:24:42 21 patent, that document, the patent, into the
10:24:46 22 chat, which is Exhibit 1001.

10:24:53 23 (Document marked as Exhibit 1001
10:25:02 24 for identification)

10:25:02 25 Q. I'd like you to open that,

10:25:04 1 download it if you need to, and then open the

10:25:06 2 document, please.

10:25:20 3 A. Yes, I have.

10:25:21 4 Q. If you look on the first page in

10:25:24 5 the bottom right corner, you should see it says

10:25:32 6 "Fusion Orthopedics Exhibit 1001."

10:25:36 7 Do you see that?

10:25:37 8 A. Yes.

10:25:37 9 Q. Are you familiar with this patent?

10:25:38 10 A. Yes.

10:25:39 11 Q. And again, during this deposition,

10:25:41 12 I will refer to this patent as the '166 patent.

10:25:45 13 Okay?

10:25:46 14 A. Okay.

10:25:59 15 Q. Okay. If we turn back to your

10:26:17 16 declaration, and if we turn to Paragraph 31,

10:26:22 17 which is on Page 13, and I can put that also up

10:26:26 18 on the Zoom window in one second. You should

10:27:04 19 see on the screen now Paragraph 31 on Page 13

10:27:11 20 of your declaration, which is Exhibit 1002.

10:27:15 21 Do you see that?

10:27:16 22 A. Mm-hmm.

10:27:20 23 Q. I'm sorry, I didn't hear the

10:27:22 24 response?

10:27:22 25 A. Yes, I do see that, yes.

10:27:23 1 Q. Great. Thank you. And do you see
10:27:25 2 in the first sentence it says, "The '166 patent
10:27:29 3 describes a three-member mechanical assembly"?

10:27:33 4 Do you see that?

10:27:33 5 A. Yes.

10:27:37 6 Q. I'm going to go back to -- I'm
10:27:41 7 going to go back to the '166 patent, which you
10:27:44 8 should now see on the screen, and I'm going to
10:27:46 9 go down to Figure 18 of the '166 patent.

10:27:56 10 Do you see Figure 18 of the '166
10:27:59 11 patent on your screen?

10:28:00 12 A. Yes.

10:28:00 13 Q. Figure 18 depicts a three-member
10:28:06 14 mechanical assembly, correct?

10:28:07 15 A. Yes.

10:28:13 16 Q. And the proximal hole, which is at
10:28:15 17 the top of the vertical member there, it passes
10:28:18 18 through the top surface of the nail, correct?

10:28:39 19 A. Yeah. "The first top proximal
10:28:43 20 through-hole allows the bone screw to enter and
10:28:43 21 secure across the bone fracture."

10:28:47 22 Q. Does the first proximal nail pass
10:28:56 23 through the top surface -- sorry, the first
10:28:58 24 proximal screw pass through the top surface of
10:29:01 25 the nail?

10:29:02 1 A. "The first top proximal
10:29:22 2 through-hole allows the bone screw to enter and
10:29:26 3 secure the bone fracture."
10:29:34 4 Q. Really? I don't think you're
10:29:35 5 answering the question I'm asking.
10:29:37 6 Does the first proximal screw hole
10:29:40 7 pass through the top surface of the nail?
10:29:42 8 A. "The first top proximal through
10:29:48 9 hole allows the bone screw to enter and secure
10:29:50 10 across the bone fracture."
10:29:53 11 Q. Right. But does it pass through
10:29:55 12 the top surface of the nail?
10:29:56 13 A. Yeah, I'm saying, "The first top
10:29:59 14 proximal through hole allows the bone screw to
10:30:00 15 enter and secure across the bone fracture."
10:30:02 16 Q. So do you agree that it passes
10:30:05 17 through the top surface of the nail?
10:30:06 18 A. "The first top proximal through
10:30:09 19 hole allows the bone screw to enter and secure
10:30:12 20 across the bone fracture."
10:30:14 21 Q. I understand that you're
10:30:19 22 testifying that it allows the screw to do
10:30:21 23 something, but I'm asking you where it passes
10:30:23 24 through on the nail?
10:30:23 25 A. "The first top proximal through

10:30:28 1 hole allows a bone screw to enter and secure
 10:30:31 2 across the nail." It's the first top proximal
 10:30:36 3 through hole.

10:30:36 4 Q. Okay. Does the first top proximal
 10:30:39 5 screw hole pass through the top surface of the
 10:30:42 6 nail?

10:30:50 7 A. What I'm saying from my
 10:30:52 8 declaration, "The first top proximal through
 10:30:54 9 hole allows a bone screw to enter and secure
 10:30:57 10 across a bone fracture."

10:30:58 11 Q. Okay. I'm trying to ask you a
 10:31:05 12 yes/no question, either the top proximal screw
 10:31:08 13 hole does or does not pass through the top
 10:31:11 14 surface of the nail or maybe you don't know the
 10:31:13 15 answer to that question.

10:31:15 16 So can you answer the question
 10:31:16 17 whether or not the top proximal screw hole
 10:31:18 18 passes through the top surface of the nail
 10:31:20 19 shown in Figure 18?

10:31:21 20 A. "The first top proximal through
 10:31:28 21 hole allows the bone screw to enter and secure
 10:31:32 22 across a bone fracture."

10:31:33 23 Q. Are you reading from your
 10:31:34 24 declaration somewhere?

10:31:35 25 A. That is my declaration, sir.

10:31:37 1 Q. Where are you reading that in your
10:31:38 2 declaration?

10:31:38 3 A. Paragraph 31, third sentence.

10:31:45 4 Q. Okay. So how does that answer my
10:31:55 5 question of whether or not the first top
10:31:57 6 proximal through hole passes through the top
10:32:00 7 surface of the nail?

10:32:02 8 A. "The first top proximal through
10:32:14 9 hole allows a bone screw to enter and secure
10:32:16 10 across a bone fracture."

10:32:18 11 Q. So do you not know whether the
10:32:22 12 first top proximal through hole passes through
10:32:24 13 the surface of the nail?

10:32:25 14 A. I don't recall addressing that in
10:32:27 15 my declaration.

10:32:27 16 Q. I'm not asking you to read from
10:32:29 17 your declaration. I'm asking you for your
10:32:31 18 expert opinion as an expert in this case. Can
10:32:33 19 you answer the question that's being asked?

10:32:35 20 A. I don't recall addressing that in
10:32:38 21 my declaration.

10:32:38 22 Q. Are you only here to repeat
10:32:40 23 statements that are made in your declaration;
10:32:42 24 is that all you're prepared to do today?

10:32:44 25 A. I'm prepared to answer your

10:32:47 1 questions.

10:32:47 2 Q. Okay. Great. So my question is,
10:32:49 3 does the first top proximal through hole in
10:32:53 4 Figure 18 pass through the top surface of the
10:32:56 5 nail in Figure 18?

10:32:57 6 A. "The first top proximal through
10:33:00 7 hole allows a bone screw to enter and secure
10:33:02 8 across a bone fracture."

10:33:03 9 Q. That is not responsive to my
10:33:05 10 question. So either you can't answer my
10:33:08 11 question or you're not willing to answer my
10:33:09 12 question. Because what I've just asked you,
10:33:13 13 that is not a response to the question I've
10:33:15 14 asked. You're just repeating what's in the
10:33:17 15 declaration, and I don't know why you're doing
10:33:20 16 that, but I guess I'm going to ask you again.

10:33:23 17 Can you answer the question of
10:33:24 18 whether or not the first top proximal through
10:33:27 19 hole passes through the top surface of the nail
10:33:28 20 in Figure 18?

10:33:29 21 A. "The first top proximal through
10:33:33 22 hole allows a bone screw to enter and secure
10:33:35 23 across a bone fracture."

10:33:39 24 Q. So I understand you're unable to
10:33:47 25 answer the question I've asked; is that

10:33:49 1 correct?

10:33:49 2 A. I believe I have answered your
10:33:52 3 question.

10:33:52 4 Q. I don't believe you have. I
10:33:57 5 believe you've recited a sentence from the
10:34:00 6 Paragraph 31 of your declaration that is not
10:34:03 7 responsive to my question.

10:34:06 8 So if you're planning to just
10:34:08 9 recite what's in your declaration, then I think
10:34:10 10 we're going to have to call the board, Mr.
10:34:15 11 Kamholz, because this is not the way the
10:34:18 12 deposition is going to go.

10:34:19 13 MR. LINDENBAUM: So maybe we'll
10:34:20 14 take a break, Mr. Kamholz, and you can
10:34:22 15 talk you can to your witness, and, you
10:34:24 16 know, I expect you obviously not to
10:34:26 17 discuss the substance of the deposition,
10:34:28 18 but if you want to explain to Mr.
10:34:30 19 Dominguez how this deposition is
10:34:31 20 supposed to be going, you can do that.

10:34:33 21 Would you like that opportunity,
10:34:35 22 Mr. Kamholz?

10:34:36 23 MR. KAMHOLZ: I'm happy to
10:34:38 24 instruct the witness here and now to
10:34:39 25 answer Mr. Lindenbaum's questions fully

10:34:44 1 and to the best of his ability.

10:34:47 2 MR. LINDENBAUM: Okay. Great.

10:34:47 3 Q. Mr. Dominguez, I'm going to ask my
10:34:49 4 question again, and to the best of your
10:34:51 5 ability, I'd like you to answer the question.
10:34:52 6 Okay?

10:34:53 7 A. Okay.

10:34:53 8 Q. Okay. Does the first top proximal
10:35:00 9 through hole in Figure 18 pass through the top
10:35:02 10 surface of the nail in Figure 18 of the '166
10:35:06 11 patent?

10:35:06 12 A. "The first top proximal allows a
10:35:12 13 bone screw to enter and secure across a bone
10:35:15 14 fracture."

10:35:16 15 Q. Okay. I guess we'll have to call
10:35:22 16 the board and see what they say, because this
10:35:24 17 is not -- this is not acceptable. So I'm going
10:35:27 18 to -- all right.

10:35:31 19 MR. LINDENBAUM: Michael, can we
10:35:32 20 go off the record please.

10:35:35 21 (Off the record at 10:35 a.m. and
10:35:39 22 reconvening at 10:50 a.m.)

10:50:44 23 BY MR. LINDENBAUM:

10:50:44 24 Q. Mr. Dominguez, can you hear me?

10:50:46 25 A. I can.

10:50:47 1 Q. Great. So, Mr. Dominguez, before
10:50:48 2 we took a break, I was asking you some
10:50:51 3 questions about Figure 18. In that time, have
10:50:56 4 you reconsidered the answer that you were
10:50:58 5 giving?

10:51:00 6 A. Yes. I further reviewed my
10:51:04 7 declaration. During that time I further
10:51:12 8 reviewed my declaration.

10:51:13 9 Q. Okay.

10:51:40 10 MR. LINDENBAUM: Michael, are you
10:51:42 11 able to ask the last question that was
10:51:44 12 asked.

10:51:44 13 (Reporter read back pending
10:52:00 14 question)

10:52:00 15 A. "Cognet further discloses the
10:52:01 16 first aperture at the terminal end of the third
10:52:02 17 elongated body as shown" in Figure H. "There
10:52:07 18 is an orifice or tunnel at the top of the nail
10:52:10 19 which follows in a bleak downward path toward
10:52:24 20 the coronoid process."

10:52:29 21 Q. Mr. Dominguez, are you reading
10:52:35 22 from your declaration again?

10:52:36 23 A. That is in my declaration,
10:52:40 24 Paragraph 57.

10:52:41 25 Q. Okay.

10:52:42 1 MR. LINDENBAUM: I'm just going to
 10:52:43 2 note for the record that is not
 10:52:44 3 responsive to my question. At this
 10:52:47 4 point, I'm just going to move on. We
 10:52:53 5 will seek the appropriate remedies from
 10:52:56 6 the board at the appropriate time.

10:52:59 7 Q. Mr. Dominguez, I'd like you to
 10:53:00 8 turn to Paragraph 34 of your declaration, which
 10:53:05 9 is on Page 15, and actually, I will put that up
 10:53:12 10 on the screen.

10:53:29 11 You should see Paragraph 34 on
 10:53:32 12 Page 15 of your declaration on the screen.

10:53:34 13 Do you see that?

10:53:35 14 A. Yes.

10:53:35 15 Q. And I'd like you to read the first
 10:53:40 16 sentence out loud from that paragraph.

10:53:43 17 A. "Specific to foot and angle
 10:53:46 18 fracture fusion surgery, there are numerous
 10:53:48 19 foot and angle fusion nails used in the
 10:53:51 20 hindfoot, forefoot, and midfoot for the
 10:53:54 21 treatment of small bone and extremity fractures
 10:53:58 22 that functions and resemble patent '166,
 10:54:02 23 specifically Cognet, Simon, Brumfield,
 10:54:07 24 Ferrante, and Leu have taught these devices."

10:54:11 25 Q. Have any devices sold on the

10:54:13 1 market embodied the nail and screws disclosed

10:54:19 2 in Cognet?

10:54:26 3 A. Can you repeat the question,

10:54:28 4 please?

10:54:28 5 Q. Have any devices sold on the

10:54:30 6 market embodied the nails and screws disclosed

10:54:33 7 in Cognet?

10:54:35 8 A. I do not recall addressing that in

10:54:37 9 my testimony, my declaration. That's a market

10:54:40 10 type question or sales market question, and as

10:54:43 11 an engineer, I don't have an opinion on that.

10:54:45 12 Q. Okay. Are you aware of any

10:54:47 13 devices sold on the market that embody the

10:54:50 14 nails and screws disclosed in Cognet?

10:54:53 15 A. As I said, I don't recall

10:54:58 16 addressing that in my declaration.

10:54:59 17 Q. I didn't ask you if you addressed

10:55:02 18 it in your declaration. I just said are you

10:55:04 19 aware? Can you answer the question?

10:55:10 20 A. Specific to Cognet?

10:55:32 21 Q. Yes.

10:55:33 22 A. I don't recall addressing that in

10:55:34 23 my declaration.

10:55:35 24 Q. Okay. That's, again, not

10:55:37 25 responsive to the question I asked.

10:55:42 1 MR. LINDENBAUM: I'm going to,
10:55:44 2 ask, Michael, if you could repeat the
10:55:46 3 question one more time. Actually,
10:56:00 4 Michael, before you do that.

10:56:00 5 Q. Mr. Dominguez, I'm going to point
10:56:02 6 out, the beginning of that sentence you just
10:56:05 7 read says "there are numerous foot and ankle
10:56:07 8 fusion nails used in the hindfoot, forefoot and
10:56:07 9 midfoot for the treatment of small bone and
10:56:12 10 extremity fractures."

10:56:13 11 And so I'm asking you in terms of
10:56:15 12 your knowledge of the foot and ankle fusion
10:56:19 13 nails, whether or not you're aware of any
10:56:25 14 devices sold on the market that embody the
10:56:27 15 nails and screws disclosed in Cognet?

10:56:29 16 A. There are nails -- there are nails
10:56:59 17 in the market today for the treatment of foot
10:57:02 18 fractures, of small bone fractures, that are
10:57:06 19 commercially available and sold today.

10:57:08 20 Q. Is that your full answer to my
10:57:15 21 question?

10:57:16 22 A. That's the best answer I can
10:57:21 23 provide you.

10:57:23 24 Q. Okay. I'm going to note for the
10:57:29 25 record that's again not responsive. Let me

10:57:31 1 just ask you generally, Mr. Dominguez, is it
 10:57:35 2 your intention to answer my questions only with
 10:57:38 3 what is explicitly stated in your declaration
 10:57:42 4 today?

10:57:43 5 A. I'm prepared to answer your
 10:57:46 6 question to the best of my capability.

10:57:48 7 Q. And does that mean that you are
 10:57:51 8 planning to only recite what is explicitly
 10:57:55 9 stated in your declaration in response to my
 10:57:57 10 questions?

10:57:57 11 A. I'm prepared to answer your
 10:58:01 12 questions to the fullest extent of my
 10:58:04 13 capability.

10:58:04 14 Q. And again, even that is not
 10:58:07 15 responsive to my question. Okay.

10:58:13 16 Let me ask, are you aware of any
 10:58:15 17 devices sold on the market that embody the
 10:58:17 18 nails and screws disclosed in Simon?

10:58:20 19 A. Yes, I am aware of intramedullary
 10:58:34 20 nails as disclosed in Simon for the use of foot
 10:58:39 21 and ankle fracture surgery.

10:58:41 22 Q. And who offers those
 10:58:48 23 intramedullary nails for sale?

10:58:50 24 A. Most foot and ankle medical device
 10:58:55 25 companies, such as Smith & Nephew, DePuy,

10:59:00 1 Johnson & Johnson DePuy, Zimmer, all of the
10:59:05 2 orthopedic medical device companies offer
10:59:08 3 fracture fixation intramedullary nails for the
10:59:12 4 foot and ankle.

10:59:13 5 Q. And all of those companies that
10:59:23 6 you mentioned offer for sale an intramedullary
10:59:29 7 nail as disclosed in Simon?

10:59:30 8 A. Yes.

10:59:31 9 Q. Okay. Are you aware of any
10:59:46 10 devices sold on the market that embody the
10:59:48 11 nails and screws disclosed in Brumfield?

10:59:51 12 A. Yes, I am.

10:59:55 13 Q. And who has offered for sale those
11:00:00 14 nails and screws?

11:00:03 15 A. Smith & Nephew, Zimmer, Orthofix,
11:00:12 16 all of the large bone extremity trauma fracture
11:00:17 17 companies offer intramedullary nails such as
11:00:21 18 described.

11:00:23 19 Q. Okay. Are you aware of any -- are
11:00:36 20 you aware of any devices sold on the market
11:00:38 21 that embody the nails and screws disclosed in
11:00:42 22 Ferrante?

11:00:43 23 A. Yes.

11:00:43 24 Q. And who has offered those nails
11:00:45 25 and screws for sale?

11:00:53 1 A. Ferrante describes a bone screw,
11:00:55 2 which is a very common element in the treatment
11:00:57 3 of bone fracture and trauma, and those bone
11:01:00 4 screws are offered by every medical orthopedic
11:01:04 5 device company, such as Medtronic, Smith &
11:01:11 6 Nephew, Zimmer, Orthofix. All of the medical
11:01:16 7 device companies of trauma and bone fractures
11:01:19 8 offer bone screws such as Ferrante.

11:01:23 9 Q. Are you aware of any devices sold
11:01:42 10 on the market that embody the nails and screws
11:01:44 11 disclosed in Leu?

11:01:51 12 A. Leu discloses an intramedullary
11:01:54 13 nail, very similar to other nails on the market
11:01:57 14 that are made and offered by Zimmer, Orthofix,
11:02:01 15 Medtronic, Smith & Nephew, DePuy, and so on, as
11:02:15 16 described in Leu, it's an intramedullary.

11:02:20 17 Q. Are any devices sold on the market
11:02:22 18 comprise a nail and screw assembly in which a
11:02:25 19 top proximal hole passes through the top
11:02:26 20 surface of the nail?

11:02:27 21 A. Can you repeat the question,
11:02:44 22 please?

11:02:45 23 Q. Have any devices sold on the
11:02:56 24 market comprised a nail and screw assembly in
11:02:59 25 which a top proximal hole passes through the

11:03:01 1 top surface of the nail?

11:03:02 2 A. I don't consider myself an expert
11:03:08 3 in what products are being sold in the market
11:03:11 4 commercially for profit. So I am not able to
11:03:17 5 address your question.

11:03:17 6 Q. Does that mean you're not aware of
11:03:22 7 any devices sold on the market that comprise a
11:03:26 8 nail and screw assembly in which a top proximal
11:03:29 9 hole passes through the top surface of the
11:03:31 10 nail?

11:03:31 11 A. I am not an expert to be able to
11:03:42 12 state which commercially available products
11:03:46 13 provide a nail with a screw passing through it,
11:03:55 14 as you describe, in the top portion of the
11:03:58 15 nail.

11:04:09 16 Q. You are familiar with Fusion's
11:04:17 17 IntraLock, correct?

11:04:19 18 A. Yes.

11:04:19 19 Q. Does Fusion's IntraLock product
11:04:30 20 comprise a nail and screw assembly in which a
11:04:33 21 top proximal hole passes through the top
11:04:35 22 surface of the nail?

11:04:36 23 A. Do you have a diagram of that?

11:04:37 24 Q. I can put it up, yes. Okay. You
11:05:05 25 should see what is on your screen a document

11:05:08 1 that's been marked as Exhibit 2019 is a, as
 11:05:13 2 you'll see on the bottom, a surgical technique
 11:05:17 3 guide, and at the top you'll see it's for a
 11:05:19 4 product called IntraLock, and at the bottom
 11:05:22 5 left you'll see it's offered for sale by Fusion
 11:05:26 6 Orthopedics.

11:05:30 7 My question was, does Fusion's
 11:05:32 8 IntraLock product comprise a nail and screw
 11:05:34 9 assembly in which a top proximal hole passes
 11:05:37 10 through the top surface of the nail?

11:05:37 11 (Document marked as Exhibit 2019
 11:05:47 12 for identification)

11:05:47 13 A. I see an assembly where there's a
 11:05:50 14 nail and a screw that passes through the nail,
 11:05:52 15 and a second screw that traverses the nail in
 11:05:57 16 the opposite direction further distal in the
 11:06:00 17 nail.

11:06:10 18 Q. Have you completed your answer,
 11:06:11 19 Mr. Dominguez?

11:06:12 20 A. Yeah, that's my technical
 11:06:14 21 interpretation of that diagram.

11:06:18 22 Q. Okay. I'm going to note for the
 11:06:20 23 record that was not responsive to the question.
 11:06:22 24 I'm going to ask the question one more time.

11:06:24 25 The question was, does Fusion's

11:06:26 1 IntraLock product, as depicted here on the
11:06:30 2 screen and on the cover of Exhibit 2019, does
11:06:33 3 that product comprise a nail and screw assembly
11:06:35 4 in which a top proximal hole passes through the
11:06:37 5 top surface of the nail?

11:06:39 6 A. What I see in this diagram is a
11:06:45 7 three-member assembly comprising of a nail, a
11:06:48 8 top screw, and a lower screw. The top screw
11:06:52 9 passes through the upper portion of the nail,
11:06:56 10 and a lower screw passes through the distal
11:06:58 11 portion of the nail in a reverse direction.

11:07:04 12 So it is a three-member assembly
11:07:07 13 comprising of two screws and a nail.

11:07:13 14 Q. Okay. Again, I'm going to note
11:07:15 15 for the record that's not responsive to my
11:07:17 16 question.

11:07:17 17 I guess my only question is, Mr.
11:07:19 18 Dominguez, are you able to answer the question
11:07:21 19 as it has been asked?

11:07:22 20 A. I've answered the question to the
11:07:23 21 best of my capability.

11:07:25 22 Q. Does that mean you don't know the
11:07:27 23 answer to my question?

11:07:28 24 A. I've answered it in a technical
11:07:30 25 way that addresses the way I think of that

11:07:35 1 illustration.

11:07:35 2 Q. But the way you answered it
11:07:37 3 doesn't address my question, though. So I
11:07:39 4 guess I'm wondering if you're able to answer my
11:07:41 5 question as it has been asked?

11:07:43 6 A. Repeat the question one more time.

11:07:50 7 Q. Sure. Does Fusion's IntraLock
11:07:56 8 product comprise a nail and screw assembly in
11:08:01 9 which a top proximal hole passes through the
11:08:04 10 top surface of the nail?

11:08:05 11 A. The IntraLock assembly is in three
11:08:30 12 parts, with a top screw passing through the
11:08:33 13 proximal section of the nail, traverses through
11:08:40 14 the nail, and a lower screw traverses through
11:08:44 15 the distal end of the nail in an opposing
11:08:48 16 direction.

11:08:51 17 Q. Okay. Again, I'm going to note
11:08:53 18 that's not responsive to my question, but I'm
11:08:55 19 going to move on. Okay.

11:08:57 20 I'd like you to -- I'm going to
11:09:00 21 put back on the screen Exhibit 1002, and I
11:09:13 22 would like to turn to Attachment A, which is --
11:09:21 23 the first page of which is on the screen now.

11:09:23 24 Do you see that?

11:09:23 25 A. Yes.

11:09:24 1 Q. Is this a copy of your CV?

11:09:26 2 A. Yes, it appears that.

11:09:30 3 Q. Okay. Do you recall providing a

11:09:34 4 copy of your CV to be included with your

11:09:36 5 declaration --

11:09:36 6 A. Yes.

11:09:39 7 Q. -- when your declaration was

11:09:40 8 prepared?

11:09:42 9 A. Yes. Sorry.

11:09:43 10 Q. Are you aware of any information

11:09:47 11 that has changed or is now incorrect on your

11:09:50 12 CV?

11:09:50 13 A. No, not that I'm aware of.

11:09:56 14 Q. So if we look at the "Professional

11:10:07 15 Experience" section which is under the

11:10:09 16 "Objective. "

11:10:09 17 Do you see that section?

11:10:10 18 A. Yes.

11:10:11 19 Q. And the first item of work

11:10:14 20 experience says, "Duraspine Medical

11:10:17 21 Technologies LLC. "

11:10:19 22 Do you see that?

11:10:21 23 A. Yes, sir.

11:10:21 24 Q. And Duraspine Medical Technologies

11:10:25 25 was formerly known as Hyperjax Biomedical

11:10:30 1 Consulting, correct?

11:10:31 2 A. Correct.

11:10:31 3 Q. And the CV says you're currently

11:10:36 4 president of Duraspine Medical Technologies?

11:10:39 5 A. Yes.

11:10:40 6 Q. And are you still president of

11:10:41 7 Duraspine Medical Technologies?

11:10:43 8 A. Yes.

11:10:43 9 Q. And you have been associated with

11:10:45 10 Duraspine Medical Technologies since January of

11:10:48 11 2007, correct?

11:10:48 12 A. Yes.

11:10:49 13 Q. How long have you been president

11:10:50 14 of Duraspine Medical Technologies?

11:10:53 15 A. Since 2007.

11:10:54 16 Q. Have you held any other titles

11:10:58 17 since 2007 for Duraspine Medical Technologies?

11:11:02 18 A. As president has been my title,

11:11:08 19 since the inception of the company.

11:11:09 20 Q. Have you held any other titles

11:11:15 21 since 2007 for Duraspine Medical Technologies?

11:11:19 22 A. No.

11:11:19 23 Q. What kind of company is Duraspine

11:11:22 24 Medical Technologies?

11:11:22 25 A. It is an independent consulting --

11:11:27 1 biomedical consulting firm that works with
 11:11:31 2 orthopedic companies, medical device companies,
 11:11:34 3 many types, to help them design and bring to
 11:11:41 4 commercialization products that they wish to
 11:11:43 5 bring to the market.

11:11:57 6 Q. How many employees does Duraspine
 11:12:02 7 Medical Technologies have?

11:12:02 8 A. Duraspine just has one employee.

11:12:04 9 Q. Would that be you?

11:12:05 10 A. Yes.

11:12:06 11 Q. Has Duraspine Medical Technologies
 11:12:09 12 ever had any other employees?

11:12:11 13 A. Yes. We actually had two
 11:12:17 14 employees.

11:12:18 15 Q. When was that?

11:12:19 16 A. Two years ago.

11:12:21 17 Q. Okay. Since 2007, have there been
 11:12:31 18 any other employees of Duraspine Medical
 11:12:34 19 Technologies other than yourself and the two
 11:12:36 20 employees you just referenced?

11:12:37 21 A. No.

11:12:38 22 Q. What role did those two employees
 11:12:47 23 play for Duraspine Medical Technologies?

11:12:48 24 A. Office manager and bookkeeping
 11:13:08 25 duties.

11:13:09 1 Q. Was one person an office manager
 11:13:12 2 and the other person was a bookkeeper?
 11:13:14 3 A. No.
 11:13:19 4 Q. Was one person both the office
 11:13:21 5 manager and bookkeeper?
 11:13:22 6 A. Yes.
 11:13:25 7 Q. And what role did the other person
 11:13:27 8 play?
 11:13:27 9 A. That is the one person.
 11:13:29 10 Q. Oh, okay. So did one person --
 11:13:34 11 was one person the office manager and
 11:13:36 12 bookkeeper for a period of time, and then the
 11:13:38 13 other person that you mentioned was the office
 11:13:40 14 manager/bookkeeper for another period of time?
 11:13:45 15 A. No. There's always been just --
 11:13:47 16 from 2007 to 2023 -- sorry, '22, we had one
 11:13:56 17 person that was the bookkeeper and the office
 11:13:57 18 manager, one person.
 11:13:58 19 Q. Got it. So when you said two
 11:14:00 20 employees, were you including yourself?
 11:14:01 21 A. Yes.
 11:14:02 22 Q. Okay. And when we're discussing
 11:14:10 23 Duraspine Medical Technologies, I'm intending
 11:14:13 24 to include in my question the time that it was
 11:14:18 25 formerly known as Hyperjax Biomedical

11:14:23 1 Consulting. Okay?

11:14:24 2 A. Okay.

11:14:24 3 Q. So I guess to reask my question,

11:14:26 4 other than yourself and the person you

11:14:27 5 mentioned who was office manager and

11:14:29 6 bookkeeper, has Duraspine Medical Technologies

11:14:33 7 ever employed any other persons?

11:14:35 8 A. No, sir.

11:14:44 9 Q. And was the bookkeeper/office

11:14:46 10 manager an engineer?

11:14:47 11 A. Yes.

11:14:47 12 Q. Did the bookkeeper/office manager

11:14:51 13 offer engineering consulting services to

11:14:54 14 clients?

11:14:55 15 A. No.

11:14:58 16 Q. Have you offered engineering

11:15:00 17 consulting services to clients?

11:15:01 18 A. Yes.

11:15:20 19 Q. What types of clients have you

11:15:22 20 worked with?

11:15:22 21 A. I've worked with clients in the

11:15:25 22 spine orthopedics, general orthopedics, ear

11:15:28 23 nose and throat, head and neck, Ob/Gyn devices,

11:15:35 24 foot and ankle. When I say "orthopedics," I

11:15:38 25 mean just generally all types of orthopedics,

11:15:40 1 from foot and neck all through bones, other
 11:15:44 2 bones in the body.
 11:15:45 3 So I would say spine, general
 11:15:47 4 orthopedics, foot and ankle, ENT, ear, nose and
 11:15:52 5 throat, head and neck, Ob/Gyn, and other niche
 11:15:59 6 biomedical devices.
 11:16:00 7 Q. Okay. In terms of the types of
 11:16:08 8 clients, have you worked with medical device
 11:16:10 9 companies?
 11:16:10 10 A. Yes.
 11:16:11 11 Q. And have you worked with medical
 11:16:19 12 device companies on -- did you say spinal
 11:16:22 13 orthopedics?
 11:16:23 14 A. Yes.
 11:16:23 15 Q. Have you worked with medical
 11:16:24 16 device companies on general orthopedics?
 11:16:26 17 A. Yes.
 11:16:26 18 Q. And have you worked with medical
 11:16:28 19 device companies on ENT?
 11:16:32 20 A. Yes.
 11:16:46 21 Q. Have you worked to provide
 11:16:50 22 consulting services directly to doctors?
 11:16:52 23 A. Yes.
 11:16:53 24 Q. Other than medical device
 11:16:55 25 companies and doctors, what other types of

11:16:57 1 clients have you worked with?

11:17:10 2 A. That's primarily -- sums it up
11:17:13 3 pretty well.

11:17:13 4 Q. And the medical device companies
11:17:15 5 you've worked with, how large have they been?

11:17:17 6 A. They span the realm of start-up,
11:17:23 7 one-person companies, just founders or an
11:17:29 8 individual surgeon, all the way up to companies
11:17:34 9 that are midsize, you know, having over 100
11:17:36 10 employees and, you know, lots of sales versus
11:17:40 11 companies that are just getting started that
11:17:42 12 don't have very much sales.

11:17:43 13 So the whole gamut between
11:17:47 14 start-up and founder company and midsize
11:17:54 15 company.

11:17:54 16 Q. Okay. And if I'm looking, again,
11:17:56 17 at your CV, under the title "President," it
11:18:00 18 says, "A biomedical engineering firm that
11:18:03 19 provides expertise in medical device design
11:18:08 20 from concept through manufacture, quality
11:18:12 21 systems, manufacturing intellectual property
11:18:16 22 development."

11:18:17 23 Do you see that?

11:18:18 24 A. Yes, sir.

11:18:18 25 Q. When you say "a biomedical

11:18:20 1 engineering firm," you're referring to
 11:18:21 2 Duraspine Medical Technologies, correct?
 11:18:23 3 A. And Hyperjax.
 11:18:24 4 Q. And Hyperjax. Right. But when
 11:18:26 5 I'm referring to Duraspine Medical
 11:18:27 6 Technologies, I'm including Hyperjax in that
 11:18:30 7 title. Okay? Mr. Dominguez, can you hear me?
 11:18:47 8 A. Yes, I can.
 11:18:47 9 Q. Okay. So I don't know if I heard
 11:18:53 10 your response to the question I asked. I said,
 11:18:55 11 when I refer to Duraspine Medical Technologies,
 11:18:58 12 I'm including Hyperjax in that. Okay?
 11:19:01 13 A. Yes.
 11:19:01 14 Q. Okay. So that description I just
 11:19:10 15 read about the biomedical engineering firm that
 11:19:13 16 provides expertise, are you the only person
 11:19:16 17 from Duraspine that has provided the expertise
 11:19:21 18 described in that paragraph?
 11:19:22 19 A. When a company hires Duraspine,
 11:19:29 20 they're hiring me to provide them with my
 11:19:31 21 expertise to enable them to design products
 11:19:34 22 from concept through manufacture, help them
 11:19:38 23 with their quality systems and help them with
 11:19:41 24 manufacturing with their suppliers, supplier
 11:19:44 25 base, or my contacts of suppliers.

11:19:47 1 Q. Okay. Then I guess that's my
11:19:49 2 question. So when they hire Duraspine Medical
11:19:52 3 Technologies, the only person who provides
11:19:55 4 engineering expertise is you, correct?

11:19:57 5 A. Yes. Let me clarify that. As
11:20:06 6 part of development of a product, there are
11:20:10 7 third or independent laboratories that are
11:20:12 8 involved, such as testing laboratories.

11:20:15 9 So when we get to that stage of
11:20:17 10 the project, these products are prototyped, and
11:20:22 11 they are sent to a third independent test
11:20:25 12 laboratory for testing, where they provide
11:20:26 13 their expertise in the testing of that product
11:20:33 14 that has been designed.

11:20:34 15 Q. Understood. But the only person
11:20:35 16 that provides expertise from Duraspine Medical
11:20:42 17 Technologies is you, correct?

11:20:43 18 A. Yes.

11:20:43 19 Q. And when it says "provides
11:20:45 20 expertise in medical device design from concept
11:20:46 21 through manufacture," have you helped medical
11:20:50 22 device companies conceive of medical devices?

11:20:54 23 A. Yes.

11:20:54 24 Q. And have you helped medical device
11:21:02 25 companies conceive of orthopedic medical

11:21:06 1 devices?

11:21:07 2 A. Yes.

11:21:08 3 Q. And have you helped medical device

11:21:10 4 companies conceive of intramedullary fixation

11:21:14 5 devices?

11:21:15 6 A. Yes.

11:21:16 7 Q. And have you helped medical device

11:21:22 8 companies conceive of intramedullary fixation

11:21:25 9 devices for bone fusion?

11:21:27 10 A. Yes.

11:21:33 11 Q. And when was the last time you did

11:21:34 12 that?

11:21:34 13 A. I have an ongoing project in that

11:21:43 14 area.

11:21:44 15 Q. Do you hold yourself out as able

11:21:51 16 to provide such expertise?

11:21:52 17 A. Yes.

11:21:59 18 Q. Have you helped medical device

11:22:14 19 companies conceive of intramedullary fixation

11:22:16 20 devices since January 2007?

11:22:20 21 A. Yes.

11:22:22 22 Q. And have you helped medical device

11:22:26 23 companies conceive of intramedullary fixation

11:22:28 24 devices through the entire time between 2007

11:22:31 25 and the present?

11:22:32 1 A. Sporadically during certain times
11:22:37 2 when a project like that comes along. I don't
11:22:43 3 work exclusively on intramedullary devices.

11:22:45 4 Q. Okay. And what do you mean by
11:22:49 5 "quality systems"; what does that refer to?

11:22:52 6 A. As part of the FDA, the U.S. FDA,
11:22:56 7 every medical device company is required to
11:22:59 8 have a quality system in place as a check and
11:23:02 9 balance between engineering, manufacturing and
11:23:04 10 the quality of the product being created.

11:23:07 11 So there are quality systems
11:23:12 12 documentation, standard operating procedures,
11:23:15 13 if you will, of how a medical device company
11:23:18 14 has to perform or documents their activities.
11:23:23 15 So I assist them with making sure their quality
11:23:27 16 systems are in check or are in good order.

11:23:30 17 Q. Okay. And also mentioned
11:23:33 18 intellectual property in that paragraph.

11:23:35 19 Do you see that?

11:23:36 20 A. Yes.

11:23:36 21 Q. What role have you played with
11:23:37 22 respect to intellectual property?

11:23:40 23 A. Since I've assisted other medical
11:23:43 24 device companies in the development of their
11:23:45 25 products, some of these design projects have

11:23:48 1 led to IP, have led to a patent.

11:23:54 2 Q. Okay.

11:23:58 3 A. I would like to add to the record
11:23:59 4 as part of my policy as president of Duraspine,
11:24:03 5 if I work with a client and we develop an IP,
11:24:07 6 the IP is assigned to the client.

11:24:13 7 Q. Have some of your design projects
11:24:16 8 led to designs that were offered for sale?

11:24:18 9 A. Yes.

11:24:19 10 Q. What are some examples of those
11:24:25 11 designs that have been offered for sale?

11:24:26 12 A. Oh, within the spine orthopedics
11:24:33 13 area, pedicle screws, rods for use in lower
11:24:40 14 back, and also in cervical surgery of the
11:24:43 15 spine. So these consist of screws and clamps
11:24:47 16 and rods and set screws that are all tightened
11:24:53 17 in the body. That's one area of the products
11:24:56 18 that I've designed and developed with clients.

11:24:59 19 Q. What's another area that you've
11:25:06 20 helped clients design and develop that HAS been
11:25:09 21 offered for sale in the market?

11:25:10 22 A. Interbody fusion cages that are
11:25:14 23 used to replace the disk in the spine. These
11:25:17 24 are devices that we also called cages, but
11:25:20 25 interbody devices like cages that are inserted

11:25:24 1 into the disk area and secured with pedicle

11:25:29 2 screws.

11:25:31 3 Q. Okay. What's another design that

11:25:33 4 you helped a client develop that resulted in a

11:25:38 5 product that's offered for sale in the market?

11:25:41 6 A. Cervical plates or also anterior

11:25:46 7 lumbar plates. These are plates that are

11:25:49 8 affixed on top of the bone and secured with

11:25:51 9 bone screws in multiple locations through the

11:25:55 10 plate and into the bone to prevent -- to allow

11:25:59 11 the fusion -- to help with the fusion process.

11:26:11 12 Q. When you assist with the design of

11:26:13 13 a medical device product, have you been tasked

11:26:22 14 with designing the entire product?

11:26:23 15 A. At times, yes.

11:26:24 16 Q. Have you been tasked with helping

11:26:26 17 to improve an existing design?

11:26:30 18 A. At times, yes.

11:27:10 19 Q. Have you worked on any

11:27:13 20 intramedullary fixation -- have you worked on

11:27:16 21 the design of any intramedullary fixation

11:27:18 22 devices that have been offered for sale in the

11:27:20 23 market?

11:27:20 24 A. Not at the present time, since

11:27:44 25 it's still an ongoing project.

11:27:48 1 Q. Other than the ongoing project,
 11:27:50 2 have you worked on the design of any
 11:27:52 3 intramedullary fixation devices that have been
 11:27:53 4 offered for sale on the market?

11:27:57 5 A. I did review the previous figure
 11:28:24 6 or illustration that you showed me from Fusion.

11:28:31 7 Q. Are you referring to the IntraLock
 11:28:35 8 product?

11:28:35 9 A. I did review that project -- that
 11:28:36 10 product, or at the time it was a project.

11:28:43 11 Q. What expertise did you offer for
 11:28:45 12 that product?

11:28:45 13 A. I reviewed primarily the screws.

11:28:47 14 Q. The lag screw and the locking
 11:28:53 15 screw?

11:28:53 16 A. I reviewed the lag screw and I
 11:28:58 17 reviewed the -- as I recall, this is a long
 11:29:04 18 time ago, but I reviewed the drill guide, and
 11:29:09 19 maybe the drill itself that's passed through
 11:29:13 20 the drill guide to create the hole in the bone.
 11:29:16 21 So those two items of instruments.

11:29:20 22 Q. Okay. And when was this?

11:29:22 23 A. Oh, this is going back towards ten
 11:29:29 24 years ago, 2015, 2014.

11:29:33 25 Q. So eight or nine years ago?

11:29:39 1 A. Yeah, eight or nine or possibly up

11:29:42 2 to ten years ago, yeah.

11:29:44 3 Q. Okay. And who did you work with

11:29:49 4 -- well, was this work done for Fusion

11:29:52 5 Orthopedics?

11:29:52 6 A. No.

11:29:53 7 Q. Who was it done for?

11:29:55 8 A. It was done for SourcEd LLC.

11:30:07 9 Q. Do you know who Adam Cundiff is?

11:30:10 10 A. I've spoken with Adam on several

11:30:12 11 occasions.

11:30:12 12 Q. When was the last time you spoke

11:30:18 13 with Adam before this lawsuit?

11:30:19 14 A. 2014, 2015. Nine to ten years

11:30:28 15 ago.

11:30:29 16 Q. Have you had any communication

11:30:31 17 with Adam Cundiff since then, other than this

11:30:36 18 lawsuit?

11:30:36 19 A. No, I have not.

11:30:37 20 Q. Okay. Was the work you did on the

11:30:53 21 IntraLock product and drill guide and drill as

11:31:00 22 part of your work -- in your role as president

11:31:03 23 of Duraspine Medical Technologies?

11:31:05 24 A. Yes.

11:31:06 25 Q. Do you recall how you came to be

11:31:19 1 engaged by SourcEd for your expertise?

11:31:24 2 A. From my recollection, I received a
11:31:29 3 phone call, and that's how the conversation got
11:31:31 4 started. The person on the phone call needed
11:31:36 5 assistance with reviewing technical
11:31:41 6 information, reviewing designs that they had,
11:31:42 7 and I offered my expertise to review their
11:31:45 8 designs.

11:31:45 9 Q. Okay. Do you know who the call
11:31:48 10 was from?

11:31:48 11 A. I believe the call was from Mr.
11:31:51 12 Adam Cundiff at the time ten years ago.

11:31:59 13 Q. Do you know how he came across
11:32:00 14 your phone number?

11:32:04 15 A. I do not.

11:32:04 16 Q. So you have no idea how he came to
11:32:06 17 contact you for your services?

11:32:07 18 A. In this specific instance, I don't
11:32:11 19 know how he got -- how he knew of me to contact
11:32:15 20 me. But in my field, and given my well over 30
11:32:21 21 years of experience, I have a lot of contacts
11:32:23 22 who have contacts.

11:32:24 23 So a lot of my business is
11:32:25 24 referral, and so people could be talking at a
11:32:31 25 trade show and say, hey, if you need an

11:32:33 1 engineer, call Mr. Dominguez or they could say,
 11:32:35 2 I know a guy who can help you with your
 11:32:39 3 problem.

11:32:39 4 So just through word of mouth
 11:32:41 5 referrals, I get a lot of business that way. I
 11:32:44 6 don't have to advertise very much.

11:32:45 7 Q. Do you know if Adam Cundiff has
 11:32:48 8 ever referred any clients to you?

11:32:50 9 A. I'm not aware that he has.

11:32:51 10 Q. Okay. Before this lawsuit, did
 11:33:07 11 you meet in person with Adam Cundiff?

11:33:09 12 A. No, sir.

11:33:10 13 Q. Do you recall how many calls you
 11:33:16 14 had with Adam Cundiff before this lawsuit?

11:33:19 15 A. Going back to -- going back to
 11:33:23 16 2014, 2015 timeframe, probably three or four
 11:33:32 17 maybe, three or four phone calls. Very short
 11:33:35 18 phone calls, updates.

11:33:36 19 Q. Did you also communicate by
 11:33:39 20 e-mail?

11:33:40 21 A. Probably. That's probably the
 11:33:44 22 main mode of communication, other than a phone
 11:33:46 23 call.

11:33:47 24 Q. Okay. And when you say you
 11:33:49 25 reviewed the lag screw and drill guide and

11:33:52 1 drill, what were you tasked with doing?

11:33:54 2 A. To -- just as I said, to review
11:34:01 3 its theory of operation, make sure that the
11:34:04 4 sizes of the drill is sized properly for the
11:34:07 5 bone screw diameter that the drill guide allows
11:34:12 6 the drill to pass through, that the depth of
11:34:17 7 the hole to be measured through the drill
11:34:22 8 guide, so that it's properly inserted into the
11:34:25 9 proper depth for that particular screw.

11:34:28 10 There are multiple screw lengths
11:34:31 11 in the system. So, you know, lengths varied, a
11:34:35 12 few diameters of screws varied. But that was
11:34:40 13 primarily the crux of the review.

11:34:42 14 Q. Is that typical of the type of
11:34:46 15 work you've done as president of Duraspine
11:34:50 16 Medical Technologies?

11:34:50 17 A. Yes.

11:34:51 18 Q. Is that typical of the type of
11:35:02 19 work you currently do as president of Duraspine
11:35:05 20 Medical Technologies?

11:35:05 21 A. The work that I did for Fusion at
11:35:14 22 that time in 2014, I would consider that to be
11:35:16 23 very, very, you know, bland, very basic
11:35:20 24 engineering design activity. I get involved in
11:35:23 25 a lot more complex designs and assemblies that

11:35:29 1 are far beyond that technology.

11:35:31 2 Q. Do you currently offer -- I'm
11:36:04 3 sorry -- engineering consulting services for
11:36:08 4 intramedullary fixation devices?

11:36:10 5 A. Yes.

11:36:12 6 Q. I have a couple of questions about
11:37:07 7 the next item on your CV. We have been going
11:37:09 8 for an hour and a half. Would you like to take
11:37:13 9 a short break, Mr. Dominguez?

11:37:14 10 A. That sounds good.

11:37:16 11 MR. LINDENBAUM: Michael, why
11:37:17 12 don't we go off the record.

11:37:19 13 (Recess taken at 11:37 a.m. and
11:37:29 14 reconvening at 11:50 a.m.)

11:50:54 15 BY MR. LINDENBAUM:

11:50:54 16 Q. Mr. Dominguez, just a couple of
11:50:57 17 follow-up questions of our discussion before
11:50:59 18 the break.

11:51:00 19 As president of Duraspine Medical
11:51:07 20 Technologies, do you currently offer consulting
11:51:09 21 services to companies like Fusion Orthopedics?

11:51:15 22 A. Yeah, that is the technology area
11:51:17 23 of my expertise, medical orthopedic devices.
11:51:20 24 So they have -- that's what they do.

11:51:23 25 Q. Okay. So you currently offer

11:51:27 1 consulting services that my apply to products

11:51:34 2 sold by Fusion Orthopedics?

11:51:35 3 A. Could you repeat the question?

11:51:38 4 Q. You currently offer consulting

11:51:43 5 services that might apply to products sold by

11:51:45 6 Fusion Orthopedics?

11:51:45 7 A. Can you clarify what you mean by

11:51:48 8 sold to Fusion Orthopedics?

11:51:49 9 Q. Sold by Fusion Orthopedics. The

11:51:54 10 question is, do you currently offer consulting

11:51:58 11 services that Fusion Orthopedics might hire you

11:52:05 12 for, for their own products?

11:52:11 13 A. Yeah, that's part of my expertise

11:52:15 14 and job activities.

11:52:16 15 Q. Okay.

11:52:18 16 A. Not only Fusion, but others.

11:52:24 17 Q. I think I might have asked you

11:52:38 18 this question, but just to clarify. Did you

11:52:42 19 have any contact with Fusion Orthopedics prior

11:52:46 20 to the lawsuit filed by Extremity Medical

11:52:52 21 against Fusion Orthopedics?

11:52:52 22 A. No, I have not. I believe my

11:52:55 23 answer was, I have not spoken to Fusion

11:52:58 24 Orthopedics since 2014, 2015, until last year.

11:53:02 25 Q. Okay. Do you know how Fusion

11:53:07 1 Orthopedics identified you as an expert for
 11:53:10 2 this case?
 11:53:12 3 A. I have no idea.
 11:53:12 4 Q. Okay. If we look back at your CV,
 11:53:19 5 and I'll share that again on the screen. Under
 11:53:25 6 the section of your experience for Duraspine
 11:53:29 7 Medical Technologies there's a section for
 11:53:30 8 Medtech Momentum. Is that correct?
 11:53:33 9 A. Yes.
 11:53:33 10 Q. And it says you have been an
 11:53:36 11 advisory board member since 2020, correct?
 11:53:38 12 A. Yes.
 11:53:38 13 Q. Are you currently an advisory
 11:53:41 14 board member?
 11:53:41 15 A. Yes.
 11:53:50 16 Q. Do you provide consulting services
 11:53:52 17 as an advisory board member?
 11:53:55 18 A. As an advisory board member of
 11:54:00 19 Medtech Momentum, I provide technical advice to
 11:54:04 20 clients of Medtech Momentum.
 11:54:12 21 Q. What kind of company is Medtech
 11:54:15 22 Momentum?
 11:54:15 23 A. It's an advertising, medical
 11:54:16 24 advertising firm.
 11:54:17 25 Q. About how many employees does

11:54:24 1 Medtech Momentum have?

11:54:24 2 A. Approximately 20.

11:54:25 3 Q. Are you an employee of Medtech
11:54:27 4 Momentum?

11:54:27 5 A. No.

11:54:27 6 Q. But you provide advice directly to
11:54:37 7 clients of Medtech Momentum; is that right?

11:54:39 8 A. I'm asked from time to time to
11:54:42 9 provide clients of Medtech Momentum who are
11:54:45 10 involved in the medical device industry with my
11:54:49 11 expertise as requested.

11:54:52 12 Q. And does that advice concern
11:54:58 13 medical advertisements?

11:55:00 14 A. It concerns mostly other medical
11:55:06 15 device companies who wished to advertise or
11:55:09 16 develop a web presence for their company
11:55:12 17 online.

11:55:12 18 Q. Do you provide medical device
11:55:21 19 design expertise in your role as an advisory
11:55:25 20 board member of Medtech Momentum?

11:55:26 21 A. I will be asked to review devices
11:55:35 22 that other companies wish to bring to the
11:55:37 23 market and commercialize. And so in that part,
11:55:43 24 I will review and assess their technology. But
11:55:45 25 I do not design their technology. I don't get

11:55:49 1 involved in the development of their
11:55:53 2 technology, but just as a reviewer, an advisor.

11:55:56 3 Q. As an advisory board member of
11:56:06 4 Medtech Momentum, have you worked with Fusion
11:56:08 5 Orthopedics?

11:56:08 6 A. No.

11:56:08 7 Q. Is Fusion Orthopedics the type of
11:56:25 8 company that Medtech Momentum would provide
11:56:27 9 services to?

11:56:30 10 A. Amongst others, yes. I mean, they
11:56:36 11 provide services to orthopedic medical device
11:56:40 12 companies, and others that are nonmedical
11:56:42 13 device companies.

11:56:43 14 Q. If Fusion Orthopedics wanted to
11:57:17 15 hire Medtech Momentum for advice, would Medtech
11:57:25 16 Momentum be able to take them as a client?

11:57:29 17 A. I don't see that they have -- I'm
11:57:33 18 not aware of what their practices are for
11:57:37 19 bringing on board a new client. I don't know
11:57:40 20 what their -- how they go about deciding who to
11:57:45 21 -- which new clients to take on. So that's not
11:57:48 22 a question I can answer.

11:57:49 23 Q. Okay. What about for Duraspine
11:57:51 24 Medical Technologies, if Fusion Orthopedics
11:57:53 25 wanted to retain you to provide medical device

11:57:56 1 design expertise, would you be able to provide
11:57:58 2 it to them?

11:57:59 3 A. Currently? You're talking
11:58:03 4 currently since the --

11:58:05 5 Q. Yes.

11:58:06 6 A. I would not take on a role to help
11:58:11 7 them design products since there is a current
11:58:14 8 -- since I'm involved in this -- with this
11:58:16 9 litigation, I would not do that.

11:58:17 10 Q. Okay. But let's say this
11:58:19 11 litigation concluded, would you be able to take
11:58:22 12 them as a client?

11:58:24 13 A. I don't know. I haven't -- I
11:58:26 14 haven't considered that at all. But to be
11:58:30 15 honest with you, I am planning to retire very
11:58:34 16 soon. So I am actually decreasing my client
11:58:37 17 base, and not adding to it.

11:58:38 18 Q. Okay. All right. Do you recall
11:59:16 19 if you were paid for the services you provided
11:59:19 20 to Fusion Orthopedics in 2014/2015 timeframe?

11:59:24 21 A. I probably was, yes. At that
11:59:34 22 point, it was SourcEd -- my client was SourcEd
11:59:38 23 LLC.

11:59:39 24 Q. The product you worked on for Adam
11:59:55 25 Cundiff related to the IntraLock product,

12:00:00 1 correct?

12:00:00 2 A. Yes, under SourceEd LLC.

12:00:02 3 Q. I would like to turn to Paragraph

12:01:12 4 22 of your declaration. I will put it up on

12:01:14 5 the screen. Let me know if you see Paragraph

12:01:19 6 22, which is on Page 9 of your declaration.

12:01:22 7 A. Yes, I see Paragraph 22.

12:01:38 8 Q. Paragraph 22 states, "As part of

12:01:41 9 my independent analysis, I also analyzed the

12:01:44 10 following publications and materials, as well

12:01:47 11 as the file history for the '166 patent and the

12:01:51 12 applications to which it claims priority."

12:01:54 13 Is that correct?

12:01:55 14 A. Yes. As you recall earlier in our

12:02:03 15 conversation, I mentioned that I did not review

12:02:06 16 Exhibit numbers 1010, 1011 and 1012 on the

12:02:11 17 following page at the time that I wrote my

12:02:14 18 declaration. I have since, then, earlier this

12:02:16 19 week, I read those three documents, and found

12:02:19 20 them not pertaining to affect my declaration.

12:02:25 21 Q. Okay. So I guess -- let me back

12:02:27 22 up. So my first question was, Paragraph 22

12:02:30 23 refers to "the following publication

12:02:35 24 materials," and I note on the following page,

12:02:37 25 which I will put up on the screen, there's a

12:02:40 1 table that lists Exhibits 1001 through 1012.

12:02:45 2 Do you see that?

12:02:45 3 A. Yes.

12:02:46 4 Q. Going back to Paragraph 22, are

12:02:48 5 those the following publication materials

12:02:50 6 that's referred to in that paragraph?

12:02:51 7 A. Yes.

12:02:51 8 Q. Okay. So if we go now back down

12:02:55 9 to the table on Page 10, were you stating

12:03:03 10 earlier, which I think you just repeated, that

12:03:06 11 at the time you drafted your declaration, you

12:03:07 12 had not reviewed Exhibits 1010 through 1012?

12:03:14 13 A. Yes.

12:03:14 14 Q. Okay. But you stated that since

12:03:15 15 you signed your declaration, you have reviewed

12:03:17 16 those exhibits, and you're stating that it does

12:03:22 17 not affect your opinions; is that correct?

12:03:23 18 A. Yes.

12:03:24 19 Q. Okay. I'd like to show you

12:04:08 20 another exhibit. This is going to be the

12:04:18 21 Cognet reference, which I will show you the

12:04:21 22 English translation. Let me know if at any

12:04:24 23 point you want to see the original. The

12:04:27 24 English translation is Exhibit 1004.

12:04:32 25 Let me ask, do you have a

12:04:34 1 preference for which one I put on the screen
12:04:36 2 first?

12:04:36 3 A. I would say the English
12:04:38 4 translation.

12:04:40 5 Q. Okay.

12:04:41 6 (Document marked as Exhibit 1004
12:05:00 7 for identification)

12:05:00 8 Q. So you should see on your screen
12:05:09 9 French Patent No. 2,861,576. In fact, it is
12:05:17 10 the English translation of French publication
12:05:21 11 number 2,861,576.

12:05:23 12 Do you see that?

12:05:24 13 A. Yes.

12:05:24 14 Q. And do you notice on the bottom
12:05:26 15 right corner there's an annotation that states
12:05:29 16 "Fusion Orthopedics Exhibit 1004. "

12:05:33 17 Do you see that?

12:05:34 18 A. Yes.

12:05:34 19 Q. Okay. I'm going to show you
12:06:03 20 another, and go back to your declaration, which
12:06:06 21 is Exhibit 1002, and I'm going to show you an
12:07:11 22 image on Page 24 of your declaration.

12:07:14 23 Actually, I'm going to show you the entire Page
12:07:17 24 24 of your declaration.

12:07:18 25 Do you see the image at the top of

12:07:22 1 Page 24 of your declaration on the screen?

12:07:25 2 A. Yes.

12:07:26 3 Q. Okay. Is this an image that you

12:07:28 4 prepared?

12:07:28 5 A. Yes.

12:07:29 6 Q. Okay. It looks to me like --

12:07:38 7 well, do you see there's a purple box in the

12:07:40 8 image?

12:07:40 9 A. Yes.

12:07:41 10 Q. And it looks to me like there's an

12:07:44 11 annotation indicating that the purple box is

12:07:47 12 what you've identified as the first member; is

12:07:50 13 that correct?

12:07:50 14 A. Correct.

12:07:51 15 Q. And did you intend the purple box

12:07:57 16 to enclose the entire screw that's depicted

12:08:03 17 there?

12:08:05 18 A. The screw comprises the shaft

12:08:10 19 portion from one end, from the first end to the

12:08:21 20 second end.

12:08:22 21 Q. And you identified the tip of the

12:08:23 22 screw as the first end, correct?

12:08:25 23 A. Yes.

12:08:25 24 Q. And you identify the top of the

12:08:26 25 head as the second end, correct?

12:08:28 1 A. Yes.

12:08:29 2 Q. And you identify the first

12:08:34 3 elongated body as extending from the tip up the

12:08:38 4 shaft of the screw, correct?

12:08:40 5 A. Yes.

12:08:41 6 Q. And so, I'm going to go to the

12:08:54 7 next page, and you'll see there's another

12:08:58 8 picture of the screw. Do you see that on Page

12:09:05 9 25? This is from Cognet.

12:09:09 10 A. Yes.

12:09:09 11 Q. Do you understand this is the

12:09:10 12 screw from Cognet?

12:09:11 13 A. Yes.

12:09:11 14 Q. Okay. And you've identified the

12:09:25 15 -- if we look at this page and the page before,

12:09:30 16 it looks to me like you've identified the shaft

12:09:33 17 portion as the first elongated body.

12:09:35 18 So if I go over here, you'll see

12:09:37 19 that the first elongated body as shown in this

12:09:41 20 figure, on Page 24, and if I go to Page 25, it

12:09:47 21 looks like you've identified the shaft portion

12:09:49 22 as the first elongated body, correct?

12:09:52 23 A. Cognet is disclosing the screw as

12:10:32 24 the first member. He describes it as the first

12:10:35 25 member. So the figure that is pointing to the

12:10:46 1 first member in the figure above your page, on
12:10:53 2 Page 24 --

12:10:54 3 Q. Yes.

12:10:55 4 A. -- to the right there it says
12:10:57 5 "first member," pointing towards the entire
12:11:01 6 purple rectangle --

12:11:03 7 Q. Yes.

12:11:04 8 A. -- that is what Cognet describes
12:11:06 9 as the -- is disclosing as the screw.

12:11:32 10 In other words, the proximal screw
12:11:36 11 head on the end, the screw head on the distal
12:11:39 12 part thereof. So the member includes the
12:11:43 13 entire figure in purple that includes from
12:11:49 14 first end to second end, which includes the
12:11:53 15 threads, the shaft, and the head.

12:11:54 16 Q. Okay. But on Page 24, you have
12:11:57 17 not -- you have not included the head as part
12:12:00 18 of the first elongated body, correct?

12:12:04 19 A. A screw has an elongated body that
12:12:31 20 extends from the first end, the tip of the
12:12:33 21 screw, to the second end, the head of the
12:12:36 22 screw, and it is called the shaft. So I'm
12:12:44 23 describing the elongated body. The screw has
12:12:48 24 an elongated body that extends from the first
12:12:51 25 tip of the screw to the second end, the head of

12:12:52 1 the screw, it is called the shaft.

12:12:55 2 Q. I'm just asking you to look at the
12:12:58 3 picture that you say you created on Page 24,
12:13:01 4 and it looks like in that picture, can you
12:13:04 5 confirm that you did not include the head as
12:13:06 6 part of the first elongated body?

12:13:08 7 A. No, because "The screw has an
12:13:14 8 elongated body that extends from the first end,
12:13:18 9 the tip of the screw, to the second end, the
12:13:22 10 head of the screw." So the elongated body goes
12:13:25 11 from the tip of the screw to the head of the
12:13:27 12 screw.

12:13:27 13 Q. Okay.

12:13:30 14 MR. LINDENBAUM: Michael, can you
12:13:31 15 repeat the question, please.

12:13:31 16 (Reporter read back pending
12:14:04 17 question)

12:14:04 18 A. "A screw has an elongated body
12:14:07 19 that extends from the first end, the tip of the
12:14:07 20 screw, to the second end, the head of the
12:14:12 21 screw, it is called the shaft."

12:14:14 22 Q. Are you reading from the
12:14:15 23 declaration?

12:14:15 24 A. I'm reading from my opinion of
12:14:20 25 this interpretation of this picture.

12:14:24 1 Q. What are you reading from right
12:14:25 2 now?

12:14:26 3 A. Specifically Paragraph 44. "A
12:14:34 4 screw has an elongated body that extends from
12:14:37 5 the first end, the tip of the screw, to the
12:14:38 6 second end, the head of the screw, it is called
12:14:43 7 the shaft."

12:14:44 8 Q. Are you reading from Paragraph 44
12:14:46 9 of your declaration?

12:14:47 10 A. Yes.

12:14:47 11 Q. Okay. I'd like you to turn to
12:14:49 12 Page 24, because that's what I'm trying to ask
12:14:53 13 you about, which is the figure on Page 24.

12:14:55 14 Can you turn to Page 24 or just
12:14:57 15 look at the screen, because I have Page 24 on
12:15:00 16 the screen. Let me know when you're at Page 24
12:15:06 17 of your declaration.

12:15:09 18 A. Yes, I'm there.

12:15:18 19 Q. Can you confirm that in the
12:15:29 20 picture on Page 24 you did not include the head
12:15:32 21 as part of the first elongated body?

12:15:33 22 A. The screw shown in that figure has
12:16:09 23 at least one thread -- it comprises of a head
12:16:15 24 portion as discussed above in the claim
12:16:17 25 element, and also has a head as an exterior

12:16:19 1 surface. The screw has at least one thread, as
12:16:22 2 discussed in the claim, and all the threads
12:16:24 3 have a head thread height. The threads on the
12:16:31 4 screw extend regularly outward and the external
12:16:31 5 surface of the shaft portion of the screw.

12:16:36 6 Cognet is disclosing a screw in
12:16:37 7 this illustration. It includes from the first
12:16:42 8 tip, the first end, to the second end, to
12:16:47 9 include the tip, the threads, the shaft and the
12:16:50 10 head of the screw. That is the first member.

12:16:55 11 Q. Okay. That answer is, again, not
12:16:58 12 responsive to my question. I'm going to ask
12:17:01 13 you where are you reading from now?

12:17:02 14 A. I'm just interpreting the diagram
12:17:05 15 you're showing me.

12:17:05 16 Q. Can you answer the question I
12:17:06 17 asked you about that diagram?

12:17:08 18 A. The entire screw has an elongated
12:17:41 19 body. The screw has an elongated body that
12:17:44 20 extends from the first tip to the second end.
12:17:47 21 It's called the shaft. So that diagram shows
12:17:50 22 the first member as being the entire screw from
12:17:53 23 tip to head, and everything in between, and
12:17:57 24 contained within the purple rectangle.

12:18:06 25 Q. Okay. But can you answer my

12:18:08 1 question, which was, again, can you confirm
 12:18:14 2 that in the picture on Page 24 you did not
 12:18:16 3 include the head as part of the first elongated
 12:18:19 4 body?

12:18:19 5 A. As Cognet describes, the screw
 12:18:27 6 contains from the first end to the second end
 12:18:29 7 to include the thread tip and the head of the
 12:18:34 8 screw, the head of the elongated body.

12:18:37 9 Q. That, again, was not responsive.
 12:18:39 10 I'll just move on. And I'll just note for the
 12:18:45 11 record, Mr. Dominguez, we may seek to continue
 12:18:47 12 this deposition on another day if you are
 12:18:50 13 unwilling to answer the questions directly.
 12:18:56 14 But I'll move on then.

12:19:00 15 If we go to Page 23 of Paragraph
 12:19:22 16 45. I will share the screen again. Actually,
 12:19:24 17 Mr. Dominguez, before I continue, tell me what
 12:19:26 18 you have in front of you? Do you have a copy
 12:19:28 19 of your declaration in front of you, other than
 12:19:30 20 the one I'm showing you on the screen?

12:19:31 21 A. No. Just the one you're showing
 12:19:33 22 me on the screen.

12:19:34 23 Q. Okay. You're not reading from any
 12:19:40 24 other copy of the declaration, then?

12:19:42 25 A. Correct.

12:19:42 1 Q. You should have on your screen
 12:19:54 2 Page 23 and Paragraph 45.
 12:19:57 3 Do you see that?
 12:19:58 4 A. Yes.
 12:19:58 5 Q. Can you read that paragraph to
 12:20:04 6 yourself?
 12:20:05 7 A. Yes.
 12:20:17 8 Q. And that paragraph begins, "A
 12:20:22 9 'longitudinal axis' is an axis along the
 12:20:27 10 lengthwise direction of a body," correct?
 12:20:29 11 A. Yes.
 12:20:29 12 Q. An axis is a straight line,
 12:20:31 13 correct?
 12:20:31 14 A. Yes.
 12:20:47 15 Q. All right. I'd like to show you
 12:21:28 16 Paragraph 50 on Page 26. And I'd like you to
 12:21:42 17 read the quote that is the last two sentences
 12:21:45 18 in that paragraph.
 12:21:49 19 A. "The distal screws" --
 12:21:54 20 Q. You can read it to yourself.
 12:21:55 21 That's fine. Just let me know when you're
 12:21:57 22 finished.
 12:21:58 23 A. Yes.
 12:22:19 24 Q. Okay. So it looks like that's a
 12:22:21 25 quote from Cognet. Is that your understanding?

12:22:25 1 A. Yes.

12:22:26 2 Q. Okay. And it looks like that's a

12:22:28 3 quote from Cognet, which is Exhibit 1004, Page

12:22:33 4 4, lines 25 to 30. Is that your understanding?

12:22:36 5 A. Yes.

12:22:36 6 Q. Okay. So if you just look at the

12:22:39 7 very last part, do you see where it says, on

12:22:41 8 the last line, "through which this/these screws

12:22:47 9 passes" or "pass"?

12:22:54 10 Do you see that last line?

12:22:56 11 A. "Through which this/these screws

12:23:02 12 pass," yes.

12:23:02 13 Q. Okay. So I'm going to stop

12:23:16 14 sharing this, and I'm going to show you Cognet,

12:23:21 15 on that page and those lines, and I'm going to

12:23:27 16 ask you my question, which is, if you look at

12:23:33 17 lines 25 to 30 here, and this is Cognet, you'll

12:23:37 18 see language that looks similar to what was

12:23:39 19 just quoted, but not exactly, right, because at

12:23:43 20 the bottom of your paragraph, for example, we

12:23:47 21 just saw it said "this/these," and this in this

12:23:53 22 version of Cognet it says "this" and in parens

12:23:59 23 "or these" screw and there's no (s) here, and

12:24:03 24 there's a number of different -- there are

12:24:05 25 differences here in between the quote from your

12:24:09 1 declaration and what's actually in this
 12:24:13 2 translation of Cognet.
 12:24:15 3 So I guess my question is, do you
 12:24:17 4 know why that is?
 12:24:18 5 A. Not to my recollection.
 12:24:29 6 Q. Do you know if you reviewed a
 12:24:32 7 different translation of Cognet than what's
 12:24:34 8 been marked as Exhibit 1004?
 12:24:36 9 A. Cognet has a French patent in
 12:24:46 10 French. Then there was a translation, an
 12:24:50 11 official translation made, which is what I
 12:24:52 12 believe you have here.
 12:24:57 13 I believe there was a machine
 12:24:59 14 language version of Cognet that was done prior
 12:25:02 15 to getting this official transcript of the
 12:25:07 16 translation.
 12:25:08 17 So there may have been a
 12:25:10 18 possibility of something other than this
 12:25:15 19 version. But to my knowledge, this is the
 12:25:18 20 version we have been using.
 12:25:20 21 Q. Do you recall reviewing a machine
 12:25:26 22 language version of Cognet when you were
 12:25:29 23 preparing your declaration?
 12:25:31 24 A. I believe this was the version
 12:25:33 25 that I was using for the declaration. The

12:25:36 1 machine language came a lot earlier, but this
12:25:38 2 was the official version, so I believe I was
12:25:40 3 using this version.

12:25:43 4 Q. I'm trying to figure out where the
12:25:49 5 quoted language in the declaration might have
12:25:51 6 come from. So are you saying that the quoted
12:25:53 7 language of the declaration might have come
12:25:55 8 from a machine language version of Cognet?

12:25:59 9 A. To my ability, I'm not — I do not
12:26:03 10 remember that or recall addressing that, using
12:26:10 11 the machine language, in my declaration.

12:26:12 12 Q. Do you know where else the
12:26:13 13 language in your declaration might have come
12:26:15 14 from?

12:26:15 15 A. I do not recall what I used or
12:26:33 16 where would it come from. I'm assuming that it
12:26:36 17 is the translation of Cognet, the English
12:26:40 18 translation of Cognet.

12:26:41 19 Q. It cannot — unless the section of
12:26:56 20 Cognet was just copied incorrectly in a number
12:27:00 21 of places, do you know who would have typed the
12:27:12 22 quotation in on Page 26, which I'll show you
12:27:12 23 again?

12:27:14 24 Just before we go back to Exhibit
12:27:17 25 1002, I want you to look at the end of the

12:27:19 1 first sentence talks about "will hold in the
12:27:22 2 two cortexes of the bone," and if we look at
12:27:26 3 Exhibit 1002 in Paragraph 50 do you see it says
12:27:34 4 "can be made on the two cortices of the
12:27:40 5 (intramedullary) bone fracture."

12:27:42 6 So there's a number of
12:27:45 7 discrepancies here, and I'm just trying to
12:27:46 8 figure out if you know where that language came
12:27:49 9 from?

12:27:49 10 A. In the first sentence, in my
12:27:51 11 opinion, reads the same. If you look at two
12:27:55 12 cortices or cortexes, those are the same words.
12:27:58 13 Intramedullary bone is there and intramedullary
12:27:59 14 is in your page.

12:28:01 15 The first sentence reads almost
12:28:03 16 verbatim. I don't know that there's a
12:28:05 17 discrepancy there.

12:28:06 18 Q. "Cortexes" and "cortices" are not
12:28:10 19 actually the same word, and the word
12:28:11 20 "intramedullary" does not appear at all in the
12:28:12 21 first sentence. So there are actually
12:28:15 22 discrepancies between this quote, which should
12:28:18 23 be an exact quotation from Exhibit 1004, which
12:28:24 24 is cited here.

12:28:25 25 So, you know, my only question is,

12:28:28 1 do you know why those discrepancies? And if
 12:28:30 2 you don't know, you don't know, but that's my
 12:28:31 3 question. Do you know why those discrepancies
 12:28:33 4 are there?

12:28:33 5 A. I don't recall addressing that in
 12:28:37 6 my declaration, so I don't know.

12:28:39 7 Q. So you don't know; is that your
 12:28:43 8 answer?

12:28:43 9 A. My answer is, in reviewing this
 12:28:48 10 quotation, let's go back to the Cognet
 12:28:56 11 translation for a moment.

12:28:59 12 Q. Okay. There you go.

12:29:16 13 A. The Cognet translation says, "The
 12:29:19 14 distal screw or screws (5)." In my declaration
 12:29:22 15 it says "The distal screw, (s)." So, "The
 12:29:31 16 distal screws (5)" comprise a continuance --
 12:29:36 17 let's see. In Cognet it says "has or have a
 12:29:43 18 continuous screw thread so that the screw will
 12:29:46 19 hold in the two" cortices -- "cortexes of the
 12:29:50 20 bone. The distal screws comprise(s) a
 12:29:50 21 continuous thread so that the grip can be made
 12:29:58 22 on the two cortices of the (intramedullary)
 12:30:03 23 bone. "

12:30:12 24 Q. So I don't want to belabor the
 12:30:15 25 point, Mr. Dominguez. I'm just noting that

12:30:16 1 there are differences here between this quote
12:30:19 2 and the language in Cognet. I just was asking
12:30:21 3 if you know why that is, and it sounds like you
12:30:24 4 do not, unless you have anything further to add
12:30:26 5 to that?

12:30:27 6 A. All I know is what I said in the
12:30:39 7 document on Page 26, as far as "a continuous
8 thread so that the grip can be made on
9 the two cortices of the (intramedullary)
10 bone. It also has(have) a head with a
11 diameter greater than the diameter of the
12 body of the screw(s) and the tunnel
13 (3) through which this/these screw(s)
12:31:32 14 pass(s)."

12:31:32 15 Q. I'd like to turn to Page 30 of
12:32:07 16 your declaration. I'll stop sharing. Are you
12:32:09 17 looking yourself, Mr. Dominguez, at your copy
12:32:13 18 of the declaration?

12:32:13 19 A. I have the PDF copy of the
12:32:23 20 declaration that you sent me.

12:32:24 21 Q. Okay. You'll see on Page 30 to 31
12:32:31 22 is section -- subsection H, and I'd like to ask
12:32:39 23 you some questions about this subsection. Let
12:32:40 24 me know if you want to review this before I ask
12:32:43 25 you questions. When I say "this," I mean

12:32:52 1 Paragraphs 58 and 59.

12:33:08 2 A. Yes.

12:33:09 3 Q. So my question is, I'm going to

12:33:10 4 direct you to the figure on Page 31, which is

12:33:14 5 at the end of Paragraph 59.

12:33:16 6 Do you see that figure?

12:33:17 7 A. Yes.

12:33:18 8 Q. Okay. And it looks to me like

12:33:21 9 there's a, I would call it, an orange-shaded

12:33:26 10 region.

12:33:26 11 Do you see that?

12:33:26 12 A. Yes.

12:33:27 13 Q. And it has like a T shape. Do you

12:33:33 14 see that?

12:33:34 15 A. Describe what you're seeing when

12:33:39 16 you say "T shape"?

12:33:41 17 Q. I'm referring to the orange region

12:33:43 18 I just mentioned. To me that's T shaped. Is

12:33:46 19 that not T shaped to you?

12:33:48 20 A. Yeah, I can see how you see that,

12:33:49 21 yes. I can see how you interpret that to be a

12:33:51 22 T shape.

12:33:52 23 Q. Okay. My question is, there's an

12:33:55 24 annotation of something called -- well, if you

12:33:57 25 annotate -- identify a first bore in that

12:34:02 1 figure, correct?

12:34:03 2 A. Yes, there's a first bore being
12:34:17 3 described in that figure. There's a line
12:34:19 4 pointing towards what's called the first bore.

12:34:24 5 Q. My only question is, just to
12:34:25 6 clarify, what you're identifying as the first
12:34:27 7 bore is that orange T-shaped region, correct?

12:34:31 8 A. No.

12:34:31 9 Q. Okay. What are you identifying as
12:34:33 10 the first bore?

12:34:35 11 A. The bore is a cylindrical hole
12:34:35 12 made by a spinning rotation of a twist drill
12:34:35 13 cutting tool, so what you see there is the
12:34:47 14 entire bore, the first bore.

12:34:48 15 Q. When you say "what you see there,"
12:34:49 16 what I see there is an orange-shaded region.
12:34:53 17 And my question is, are you referring to that
12:34:55 18 orange-shaded region as the first bore?

12:34:57 19 A. Yes.

12:34:57 20 Q. Okay. And Cognet refers to that
12:35:05 21 region as a tunnel, correct?

12:35:07 22 A. Yes.

12:35:07 23 Q. And the tunnel in Cognet is
12:35:15 24 actually made up of a larger diameter tunnel
12:35:20 25 toward the top of the nail, which is the top of

12:35:22 1 the T I was referring to, and a smaller
12:35:23 2 diameter tunnel below the larger diameter
12:35:28 3 tunnel, correct?

12:35:29 4 A. Cognet discloses the tunnel at the
12:35:32 5 top of the nail" in the sense "this tunnel is
12:35:36 6 intended to receive the screw which allows the
12:35:38 7 bone anchoring of the nail. Cognet discloses a
12:35:44 8 first bore extending along the first bore axis
12:35:49 9 from the first aperture to a second aperture."
12:35:52 10 Cognet discloses a first bore from the first
12:35:55 11 aperture to the second aperture.

12:36:05 12 Q. Okay. If you look at -- I'm going
12:36:11 13 to go down to Paragraph 75, which is on Page 41
12:36:20 14 of your declaration, and I'm going to share
12:36:24 15 that again.

12:36:26 16 So let me know if you see
12:36:28 17 Paragraph 75 on your screen.

12:36:34 18 A. Yes.

12:36:34 19 Q. Okay. And about five lines down,
12:36:43 20 you reference something that you describe as
12:36:47 21 "the smaller diameter tunnel."

12:36:49 22 Do you see that?

12:36:50 23 A. Let me read that paragraph.

12:36:51 24 Q. Yes, sure.

12:37:30 25 A. Okay.

12:37:30 1 Q. So my question to you, do you see
12:37:37 2 where it says "the smaller diameter tunnel"?

12:38:12 3 Do you see that phrase, Mr. Dominguez, in
12:38:14 4 Paragraph 75 of your declaration?

12:38:16 5 A. I'm reading the entire sentence
12:38:17 6 there.

12:38:17 7 Q. Sure.

12:38:18 8 A. Okay.

12:38:26 9 Q. Do you see the phrase, Mr.
12:38:32 10 Dominguez, in Paragraph 75 of your declaration
12:38:38 11 "the smaller diameter tunnel"?

12:38:43 12 A. Yes.

12:38:44 13 Q. What's that referring to?

12:38:46 14 A. The tunnel through which the screw
12:39:21 15 passes. Thereby, making it possible to halt
12:39:26 16 progress of the screw in the tunnel and obtain
12:39:30 17 a compression effect at the fracture site.

12:39:32 18 Q. If there's a smaller diameter
12:39:35 19 tunnel, is there a larger diameter tunnel?

12:39:40 20 A. Cognet discloses that the head of
12:39:50 21 the screw has a larger diameter than the
12:39:52 22 diameter of the tunnel first bore. So it has a
12:39:59 23 larger diameter than the diameter of the tunnel
12:40:02 24 which makes it possible for the head to butt up
12:40:04 25 against the smaller diameter tunnel, and stop

12:40:08 1 progression of the screw and obtain compression
12:40:09 2 at the fracture site.

12:40:10 3 Q. If we go back to Paragraph 58, and
12:40:13 4 we look at the figure that we were just
12:40:17 5 discussing -- I'm sorry, Paragraph 59. So I'm
12:40:22 6 on Page 31 again. Where can I find the smaller
12:40:29 7 diameter tunnel in this figure?

12:40:32 8 A. "Cognet creates a 'countersink or
12:41:05 9 shoulder' cavity recess inside at the entrance
12:41:08 10 to a bore hole, which is a preferred manner to
12:41:10 11 prevent a screw from entering past the
12:41:13 12 preferred penetration depth of the screw."

12:41:17 13 Q. That is not responsive to my
12:41:18 14 question. Let me ask it again. I understand
12:41:22 15 you're reading from Paragraph 74. I'm asking
12:41:24 16 you to look at Paragraph 59 on Page 31. So if
12:41:28 17 you could turn to Page 31, let me know when
12:41:31 18 you're there.

12:41:49 19 A. I'm on Page 31.

12:41:51 20 Q. Do you see the figure on Page 31
12:41:53 21 that we were discussing moments ago?

12:41:55 22 A. Mm-hmm.

12:41:55 23 Q. And do you see the orange-shaded
12:41:58 24 region, correct?

12:41:58 25 A. Yes.

12:41:58 1 Q. And again, you identified that as
12:42:01 2 the first bore, correct?

12:42:01 3 A. Yes.

12:42:02 4 Q. Okay. And we just talked about
12:42:04 5 how later in your declaration you referred to
12:42:07 6 the smaller diameter tunnel. Do you recall
12:42:10 7 that?

12:42:10 8 A. Yes.

12:42:11 9 Q. Okay. Is the smaller diameter
12:42:16 10 tunnel depicted in this figure?

12:42:18 11 A. Cognet discloses a bore that goes
12:42:29 12 from the first aperture to the second aperture.
12:42:33 13 It runs entirely through from first aperture to
12:42:37 14 second aperture.

12:42:38 15 Q. Okay. That was not responsive to
12:42:40 16 my question. How did that answer respond to
12:42:44 17 the question of whether or not the smaller
12:42:45 18 diameter tunnel is depicted in this figure?

12:42:56 19 A. That's represented as the bore.

12:42:57 20 Q. Is your response that the smaller
12:42:59 21 diameter tunnel is depicted in this figure?

12:43:01 22 A. Cognet describes that the bore is
12:43:04 23 from the first aperture through the second
12:43:07 24 aperture.

12:43:07 25 Q. But you used the term "smaller

12:43:10 1 diameter tunnel." Those were your words in
12:43:12 2 your declaration.

12:43:14 3 My question is, can you tell me
12:43:16 4 whether or not in this figure the smaller
12:43:19 5 diameter tunnel is depicted?

12:43:21 6 A. Cognet describes the bore or
12:43:42 7 tunnel, as he may call it, that runs from the
12:43:45 8 first aperture to the second aperture.
12:43:46 9 Everything from those two ends are part of the
12:43:50 10 tunnel or of the bore.

12:43:52 11 Q. Okay. I'll move on. Again, that
12:43:54 12 is an unresponsive response to my question.

12:43:59 13 I'll tell you what I think. It
12:44:10 14 appears to me that the vertical portion of the
12:44:13 15 T, I described the orange section that I see as
12:44:17 16 a T, is a smaller diameter tunnel.

12:44:20 17 Do you agree with that?

12:44:21 18 A. Can you repeat the question.

12:44:22 19 Q. Yes. It appears to me that the
12:44:26 20 vertical portion of the T, and again, I see the
12:44:29 21 orange portion shaped as a T, is the smaller
12:44:32 22 diameter tunnel.

12:44:34 23 Do you agree with that?

12:44:35 24 A. I don't know what you mean by
12:44:37 25 smaller vertical portion?

12:44:39 1 Q. I didn't say smaller vertical. I
12:44:41 2 used the term you used in Paragraph 75, which
12:44:44 3 is "smaller diameter tunnel."

12:44:46 4 A. "The rotation axis of the drill
12:45:13 5 can be inclined at an angle relative to the
12:45:15 6 surface being cut to establish a drill path
12:45:30 7 angle or direction to the surface ... of the
12:45:32 8 third member. The resulting internal size of
12:45:35 9 the bore hole is of the same size as the drill
12:45:39 10 used to create the hole." The bore hole "is
12:45:47 11 created by removing the material, a bore will
12:45:49 12 have an interior surface. Cognet discloses a
12:45:54 13 bore at the first aperture."

12:45:57 14 Q. You're reading from Paragraph 60,
12:46:02 15 correct?

12:46:02 16 A. Yes.

12:46:05 17 Q. Okay. Again, what you're reading
12:46:07 18 is not responsive to my question. I will take
12:46:09 19 that to mean you are not willing to answer my
12:46:11 20 question. Okay. I will move on.

12:46:13 21 If we turn back to Page 31, and
12:46:17 22 the annotated figure there, is the
12:46:21 23 orange-shaded region a cylindrical hole?

12:46:25 24 A. Cognet explains that the interior
12:46:34 25 surface of the opening of the nail is created

12:46:37 1 by a drill, circular drill creating a circular
12:46:43 2 path.

12:46:46 3 Q. It's a yes/no question. Is the
12:46:49 4 orange-shaded region a cylindrical hole?

12:46:53 5 A. From the first aperture to the
12:46:56 6 second aperture, there is a cylindrical bore
12:47:00 7 through this region.

12:47:01 8 Q. That's not my question. My
12:47:05 9 question was, is the orange-shaded region, the
12:47:09 10 entire orange-shaded region, a cylindrical
12:47:13 11 hole?

12:47:14 12 A. The entire region from the first
12:47:22 13 aperture to the second aperture is a
12:47:27 14 cylindrical bore.

12:47:28 15 Q. It's your testimony that the
12:47:32 16 entire shaded region from the first aperture
12:47:34 17 that you identified in the figure to the second
12:47:35 18 aperture you've identified in the figure is a
12:47:38 19 single cylindrical bore; is that your
12:47:42 20 testimony?

12:47:42 21 A. Cognet discloses it as a tunnel
12:47:45 22 going from the first aperture to the second
12:47:47 23 aperture. Then he further discloses at the
12:47:51 24 first aperture there's a counterbore,
12:47:56 25 countersink, to allow the screw head to enter

12:48:01 1 that space, that cavity.

12:48:02 2 Q. Okay. And is the counterbore or
12:48:12 3 countersink the upper portion of the T shape
12:48:15 4 that you've depicted there? The upper portion
12:48:21 5 of the T region of the orange-shaded area.

12:48:25 6 A. Cognet creates a countersink or
12:48:51 7 shoulder cavity recess inside the entrance to a
12:48:55 8 bore hole which is a preferred manner to
12:48:56 9 prevent the screw from entering and going past
12:48:58 10 the preferred penetration depth of the screw.
12:49:01 11 So Cognet does create a countersink or a
12:49:03 12 shoulder at the cavity recess inside the
12:49:06 13 entrance to the bore.

12:49:13 14 Q. And is the countersink depicted as
12:49:29 15 the upper portion of the T-shaped orange
12:49:33 16 shading that you have in this figure?

12:49:36 17 A. Cognet creates a countersink or a
12:49:38 18 shoulder.

12:49:40 19 Q. I want you to tell me where that
12:49:41 20 is in this figure, because it's not -- you
12:49:45 21 haven't identified where the countersink or
12:49:46 22 counterbore is in that figure. Can you tell me
12:49:49 23 where it is in that figure?

12:49:59 24 A. If you look on the top of Page 40.

12:50:03 25 Q. All right.

12:50:04 1 A. That illustration there shows a
12:50:07 2 first bore, and there's an aperture.

12:50:14 3 Q. Yes.

12:50:14 4 A. Cognet describes having a
12:50:18 5 countersink or a counterbore at the first
12:50:23 6 aperture that allows the screw head to stop,
12:50:31 7 not pass through that point for that section of
12:50:36 8 the bore.

12:50:36 9 Q. Okay. First, what's the
12:50:39 10 difference between a countersink and a
12:50:40 11 counterbore?

12:50:41 12 A. For the most part, they're one of
12:50:45 13 the same, but there can be a difference in the
12:50:47 14 geometry. A countersink may be tapered
12:50:51 15 sometimes, it's often tapered. But a
12:50:56 16 counterbore may be more cylindrical.

12:50:59 17 Q. And what is depicted in Cognet?

12:51:01 18 A. Cognet here, keep in mind that
12:51:05 19 Cognet's figures are hand drawn. So it's hard
12:51:08 20 to judge. But I am saying that Cognet has a
12:51:14 21 shoulder, he has a shoulder, that transitions
12:51:18 22 from the smaller diameter bore into a larger
12:51:24 23 diameter counterbore or countersink at the
12:51:31 24 first aperture.

12:51:39 25 MR. KAMHOLZ: If I just may ask,

12:51:40 1 does anybody want to break for lunch,
 12:51:42 2 since it's coming on to 1:00 p.m.
 12:51:45 3 eastern time already?
 12:51:47 4 MR. LINDENBAUM: Yes. I have just
 12:51:48 5 a couple more questions, and we can take
 12:51:50 6 a break.
 12:51:52 7 Q. Does that sound okay with you, Mr.
 12:51:56 8 Dominguez?
 12:51:56 9 A. Yes, sure.
 12:51:58 10 MR. LINDENBAUM: Are you okay,
 12:51:59 11 Michael?
 12:52:01 12 COURT REPORTER: Yes. Thank you.
 12:52:05 13 Q. So if you're looking at the -- I
 12:52:11 14 think you said that Cognet discloses a
 12:52:15 15 countersink, correct?
 12:52:16 16 A. Cognet describes it as a -- Cognet
 12:52:43 17 describes his bore as a tunnel.
 12:52:50 18 Q. All right. I thought you said
 12:52:54 19 Cognet creates a countersink?
 12:52:55 20 A. It's described as a countersink or
 12:52:58 21 a counterbore.
 12:52:59 22 Q. Okay. Do you think that Cognet's
 12:53:05 23 countersink is tapered?
 12:53:07 24 A. Well, I use both words in my
 12:53:12 25 declaration, because from the visual

12:53:16 1 illustration in Cognet, it's hand drawn, it's
12:53:20 2 pretty thick, you know, pencil, whatever he
12:53:22 3 used to draw it. So I wanted to make sure that
12:53:25 4 I made my point clear that it could be a
12:53:28 5 countersink or it could be a shoulder.

12:53:30 6 So I say Cognet creates a
12:53:33 7 countersink or a shoulder cavity recess inside
12:53:36 8 the entrance to a bore hole, which is a
12:53:39 9 preferred manner to a POSA to be able to
12:53:40 10 prevent the screw from entering past the
12:53:42 11 preferred penetration depth of the screw, and
12:53:45 12 have the screw head reside partially in this
12:53:49 13 cavity.

12:53:56 14 So the internal surface refers to
12:54:00 15 block any further entry of the screw at the
12:54:01 16 moment the screw head contacts the internal
12:54:04 17 surface of the shoulder.

12:54:05 18 Q. If we look down at Paragraph 74,
12:54:09 19 which I understand you were reading before, and
12:54:11 20 on the fourth line it says here, "Cognet
12:54:14 21 creates a 'countersink or shoulder' cavity
12:54:19 22 recess."

12:54:20 23 In your mind, is there a
12:54:22 24 difference between a countersink or a shoulder?

12:54:29 25 A. I was thinking of it as a recess,

12:54:31 1 a cavity recess, inside the entrance to the
12:54:34 2 bore hole.

12:54:34 3 Q. But is there a difference between
12:54:36 4 a countersink and a shoulder?

12:54:37 5 A. As I said earlier, a countersink
12:54:40 6 has a little bit more of a taper to it, where a
12:54:43 7 shoulder is a little bit more cylindrical,
12:54:45 8 round, along its depth.

12:54:49 9 Q. Okay. So if we look at the figure
12:54:54 10 at the top of Page 40, it's right above
12:54:58 11 Paragraph 73, you've annotated the head of
12:55:02 12 first member.

12:55:04 13 Do you see that?

12:55:05 14 A. Yes.

12:55:06 15 Q. And is that head residing in the
12:55:08 16 countersink?

12:55:09 17 A. Yes. That head beside the first
12:55:16 18 bore.

12:55:17 19 Q. And is the bottom of that head
12:55:19 20 pressed against the shoulder?

12:55:20 21 A. There is an abutment taking place
12:55:30 22 in Cognet's illustration. The exactness of
12:55:35 23 where that is, you know, lends itself to the
12:55:37 24 actual shape.

12:55:39 25 But I would say to a POSA, there

12:55:42 1 is going to be a surface-to-surface contact
12:55:45 2 between the head and this bore, this larger
12:55:50 3 bore, so that the head fits into. And it will
12:55:54 4 likely make contact somewhere along the height
12:56:00 5 of the head, but it could make contact at the
12:56:02 6 shoulder of the head to the shoulder of the
12:56:06 7 bore.

12:56:06 8 Q. When you say the shoulder of the
12:56:18 9 head, is that like the lower surface of the
12:56:21 10 head?

12:56:29 11 A. "The exterior surface of the head
12:56:32 12 portion of the first member abut the interior
12:56:34 13 surface of the first bore at the first
12:56:37 14 aperture." Abutment here or "abut refers to
12:56:41 15 touching or making contact along an edge.
12:56:45 16 Cognet creates a 'countersink or shoulder'
12:56:48 17 cavity recess inside at the entrance to a bore
12:56:50 18 ... which is the preferred manner from
12:56:52 19 preventing the screw from entering past the
12:56:54 20 preferred penetration depth of the screw. The
12:56:58 21 internal shoulder serves to block further entry
12:56:58 22 of the screw at the moment when the screw head
12:57:01 23 contacts the internal surface of the shoulder."

12:57:03 24 So what Cognet is saying is, as I
12:57:06 25 said here, "The internal shoulder serves to

12:57:10 1 block further entry of the screw at the moment
 12:57:12 2 the screw head contacts the internal surface of
 12:57:14 3 the shoulder."

12:57:15 4 Q. Okay. I believe you said just a
 12:57:21 5 moment ago that the shoulder of the head would
 12:57:25 6 make contact with the shoulder of the bore.

12:57:27 7 So can you tell me what the
 12:57:32 8 shoulder of the head is?

12:57:33 9 A. The shoulder of the head is -- the
 12:57:43 10 shoulder of a head of a screw is right below
 12:57:46 11 the head, or that surface on the head, on the
 12:57:52 12 head that's -- it's a surface on the head of a
 12:57:59 13 screw. That shoulder abuts or touches along an
 12:58:05 14 edge, and it touches inside this countersink or
 12:58:08 15 shoulder cavity recess inside the entrance to
 12:58:12 16 the bore hole.

12:58:12 17 So there's a contact being made
 12:58:14 18 between the head and the countersink or the
 12:58:18 19 shoulder.

12:59:03 20 Q. Okay. I think I understand. So
 12:59:05 21 when you're talking about the shoulder of the
 12:59:07 22 head abutting the countersink, or the shoulder
 12:59:15 23 cavity in the countersink, the shoulder of the
 12:59:22 24 surface -- let me get this straight.

12:59:25 25 The shoulder of the head would

12:59:29 1 press against the shoulder of the cavity,
12:59:32 2 correct?

12:59:33 3 A. Yeah, I think we described it as
12:59:36 4 the surface of the head. Go back to what
12:59:41 5 Cognet --

12:59:45 6 Q. Do you want to go to Cognet?

12:59:48 7 A. I think I can find it here.

12:59:53 8 Q. Let me put Cognet in the share so
12:59:55 9 you can access it. Let me do that. Hold on.
12:59:59 10 Sorry about that. My apologies, I did not put
01:00:13 11 Cognet in the Zoom chat files.

01:00:24 12 A. Okay. Figure 1 of Cognet shows
01:00:26 13 that the exterior surface of the head portion
01:00:28 14 of the first member abutting the interior
01:00:30 15 surface of the first bore at the first
01:00:33 16 aperture.

01:00:33 17 So "Cognet further discloses that
01:00:35 18 the head of the screw (first member) has a
01:00:37 19 larger diameter than the diameter of the tunnel
01:00:40 20 (first bore) which makes" the "head to butt up
01:00:44 21 against the smaller diameter tunnel to stop the
01:00:48 22 progression of the screw and obtain a
01:00:50 23 compression effect" because abutment is taking
01:00:53 24 place "at the fracture site."

01:00:56 25 Q. Is the head of the screw in Cognet

01:01:00 1 cylindrical, then?

01:01:04 2 A. Cognet describes the head --

01:02:00 3 "Cognet discloses that the head of the screw

01:02:03 4 (first member) has a larger diameter than the

01:02:05 5 diameter of the tunnel, which makes it possible

01:02:08 6 for the head to butt up against the smaller

01:02:11 7 diameter tunnel to stop the progression of the

01:02:13 8 screw and obtain a compression effect at the

01:02:16 9 fracture site."

01:02:17 10 Q. So if Cognet discloses that the

01:02:20 11 head of the screw has a diameter, does that

01:02:24 12 indicate to you that the head is cylindrical?

01:02:32 13 A. My interpretation is that the

01:02:38 14 diameter infers that it's at a certain

01:02:42 15 location. So if the head is of a constant

01:02:44 16 diameter, then the diameter is the same

01:02:46 17 throughout the entire depth of the head.

01:02:48 18 But if the head starts with a

01:02:50 19 small diameter near the shank, and it

01:02:53 20 increasingly tapers to the largest diameter at

01:02:56 21 the top of the head, that is still a

01:03:02 22 diametrical taper, that's a diametrical taper.

01:03:09 23 It still infers that you still have a diameter.

01:03:11 24 Q. But you don't see that -- that

01:03:15 25 taper is not depicted in Figure 1, correct?

01:03:17 1 A. If I look at my declaration, the
01:03:24 2 figure on the top of Page 42 --

01:03:28 3 Q. Okay. Hold on one second. Did
01:03:39 4 you say 42?

01:03:40 5 A. Top of Page 42. The head is being
01:03:42 6 represented, the head, first member, being
01:03:46 7 represented in blue.

01:03:47 8 Q. Yes.

01:03:47 9 A. This is using Cognet's
01:03:49 10 illustration. If you look at his illustration,
01:03:53 11 it is, you know, I can draw the conclusion that
01:03:59 12 at that point in the diameter, there's a
01:04:01 13 diameter head here.

01:04:03 14 Is it constant or is there a
01:04:04 15 slight taper to this head? It's hard to tell.
01:04:10 16 But there's a diameter head that is entering a
01:04:14 17 diametrical larger or aperture, and this head
01:04:17 18 fits in side, because the diameters are -- the
01:04:21 19 diameter of the head is slightly smaller than
01:04:24 20 the head of the aperture.

01:04:25 21 So there's a fit there that takes
01:04:27 22 place, but the head, as Cognet discloses, it
01:04:30 23 has a diameter. So it is round with a
01:04:34 24 diameter.

01:04:34 25 Q. Okay.

01:04:39 1 MR. LINDENBAUM: Mr. Dominguez,
01:04:43 2 and, Scott, is this a good time to take
01:04:45 3 a break?

01:04:51 4 THE WITNESS: It is for me.

01:04:52 5 MR. LINDENBAUM: Okay. So why
01:04:53 6 don't we do that. And it's like 1:04
01:04:57 7 now. Why don't we check in, I guess,
01:05:01 8 maybe like a half hour maybe. About
01:05:14 9 1:35, 1:40. Does that work?

01:05:16 10 THE WITNESS: That's good for me.

01:05:18 11 MR. KAMHOLZ: That's good for me,
01:05:19 12 too.

01:05:20 13 MR. LINDENBAUM: Okay. See you
01:05:20 14 then.

01:05:21 15 (Luncheon recess taken at 1:04
01:05:26 16 p.m. and reconvening at 1:37 p.m.)

01:37:30 17 BY MR. LINDENBAUM:

01:37:30 18 Q. Mr. Dominguez, before the break,
01:37:49 19 we were looking at, and I'd like to turn back
01:37:51 20 to the figure depicted on Page 31 of your
01:37:53 21 declaration, Exhibit 1002. I will share my
01:38:00 22 screen again so you can see the figure I'm
01:38:02 23 referring to.

01:38:04 24 We had discussed before the break
01:38:06 25 that there was an orange-shaded region in the

01:38:11 1 figure that you -- I'm sorry, you faded part of
01:38:18 2 the figure in orange to indicate where the
01:38:21 3 first bore is, correct?

01:38:21 4 A. Correct.

01:38:26 5 Q. Okay. And my question is, is that
01:38:29 6 orange-shaded region a cylindrical hole?

01:38:33 7 A. Cognet discloses a tunnel at the
01:38:37 8 top of the nail that descends, and this tunnel
01:38:40 9 is intended to receive a screw that allows the
01:38:44 10 bone anchoring of the nail.

01:38:45 11 Q. So is it your testimony that the
01:38:54 12 orange-shaded region is not a cylindrical
01:38:56 13 tunnel? I'm sorry. Is not a cylindrical hole?

01:39:11 14 A. The tunnel or "bore is a
01:39:20 15 cylindrical hole made by the spinning rotation
01:39:24 16 of a twist drill cutting tool. It's typically"
01:39:29 17 used and "typically made by removing material
01:39:29 18 from the solid or hollow object, similar to a
01:39:53 19 tunnel or orifice."

01:40:02 20 Q. Mr. Dominguez, you just read
01:40:03 21 Paragraph 58, correct?

01:40:05 22 A. Correct.

01:40:05 23 Q. My question is, is the
01:40:07 24 orange-shaded region a cylindrical hole?

01:40:09 25 A. "A bore is a cylindrical hole made

01:40:16 1 by the spinning rotation of a twist drill

01:40:19 2 cutting tool."

01:40:20 3 Q. Is it your testimony that the

01:40:24 4 orange-shaded region is a cylindrical hole?

01:40:27 5 A. "A bore is a cylindrical hole made

01:40:41 6 by a spinning rotation of a twist drill cutting

01:40:45 7 tool."

01:40:45 8 Q. So can you or can you not confirm

01:40:47 9 what you identified as a bore, which is the

01:40:50 10 shaded region in the figure on Page 31, whether

01:40:53 11 that bore is a cylindrical hole?

01:40:56 12 A. "Cognet discloses that a tunnel at

01:40:59 13 the top of the nail that descends" and "this

01:41:01 14 tunnel is intended to receive a screw which

01:41:03 15 allows the bone anchoring of the nail."

01:41:05 16 Q. Okay. All of that was

01:41:07 17 unresponsive to my question. I guess I will

01:41:10 18 move on, because I understand you cannot answer

01:41:13 19 the question.

01:41:13 20 Is the orange-shaded region two

01:41:17 21 cylindrical holes?

01:41:17 22 A. Cognito discloses there's a first

01:41:24 23 bore extending along the first bore axis from

01:41:26 24 first aperture to second aperture. That's the

01:41:30 25 figure that you have on your page there.

01:41:34 1 So the second aperture -- so
01:41:36 2 Cognet discloses that there's a first bore
01:41:39 3 extending along a first bore access from first
01:41:41 4 aperture to second aperture.

01:41:43 5 Q. And do you see any cylindrical
01:41:45 6 holes in that bore?

01:41:47 7 A. The bore is a cylindrical hole
01:41:51 8 made by the spinning rotation of a twist drill
01:41:54 9 cutting tool.

01:41:55 10 Q. Okay. So is the shaded region on
01:41:58 11 Page 31 a cylindrical hole made by the spinning
01:42:04 12 rotation of a twist drill cutting tool?

01:42:06 13 A. It is a bore is a cylindrical hole
01:42:09 14 made by the spinning rotation of a twist drill.

01:42:13 15 Q. Right. Is that bore a cylindrical
01:42:15 16 hole made by the spinning rotation of a drill?

01:42:18 17 A. Cognet is disclosing the first
01:42:22 18 bore is extending along this first bore axis
01:42:25 19 from the first aperture to a second aperture.

01:42:33 20 Q. I will note for the record, again,
01:42:35 21 that answer is unresponsive to my question.

01:43:16 22 All right. If you turn to the
01:43:17 23 next paragraph, Paragraph 60. I have it on the
01:43:22 24 screen. It goes from Page 31 to 32.

01:43:25 25 What I'd like to ask you about,

01:43:27 1 Mr. Dominguez, is about six lines down on Page
01:43:37 2 32, beginning on the sixth line it says, "A
01:43:44 3 bore hole is commonly created using a straight
01:43:47 4 drill."

01:43:47 5 Do you see that?

01:43:48 6 A. Yes.

01:43:54 7 Q. What is a straight drill?

01:43:56 8 A. A bore is a cylindrical hole made
01:44:32 9 by the spinning rotation of a twist cutting
01:44:36 10 tool, a twist drill cutting tool, pardon me.
01:44:39 11 So a bore is a cylindrical hole made by the
01:44:43 12 spinning rotation of a twist drill cutting
01:44:46 13 tool.

01:44:46 14 Q. Okay. That answer was not
01:44:56 15 responsive to my question. I will assume that
01:44:58 16 you cannot answer the question because you do
01:45:00 17 not know the answer.

01:45:00 18 Does the straight drill create a
01:45:05 19 cylindrical hole?

01:45:06 20 A. A bore is a cylindrical hole made
01:45:12 21 by a spinning rotation of a twist drill cutting
01:45:15 22 tool.

01:45:15 23 Q. Again, that answer is not
01:45:16 24 responsive to my question. I will assume you
01:45:18 25 do not know the answer or are refusing to

01:45:21 1 answer the question.
01:45:22 2 Could a straight drill create the
01:45:24 3 tunnel disclosed in Cognet?

01:45:26 4 A. "A bore hole is commonly created
01:46:00 5 using a straight drill that is spinning along
01:46:04 6 its drill axis of rotation. The rotational
01:46:07 7 axis of the drill can be inclined at an angle
01:46:10 8 relative to the surface being cut to establish
01:46:12 9 the drill path angle or direction to the
01:46:14 10 surface of the third member."

01:46:21 11 Q. You're reading from Paragraph 60,
01:46:29 12 but that is not responsive to my question. My
01:46:31 13 question was, could a straight drill be used to
01:46:37 14 create the tunnel disclosed in Cognet?

01:46:40 15 A. "The resulting internal size of
01:46:43 16 the bore hole is at the same size of the drill
01:46:47 17 used to create the hole."

01:46:50 18 Q. Again, not responsive to my
01:46:51 19 question. I see you're continuing to read
01:46:53 20 Paragraph 60.

01:46:56 21 If we look at the figure, again,
01:46:58 22 on Page 31, and again, we're looking at the
01:47:03 23 shaded orange region, the top of the T is not
01:47:09 24 tapered, correct?

01:47:14 25 A. You referred to what I have called

01:47:21 1 as the first aperture?

01:47:22 2 Q. Well, I'm referring to what I

01:47:24 3 think you called the countersink. Let me back

01:47:35 4 up a second.

01:47:37 5 You've identified the first

01:47:38 6 aperture on Page 31 as the opening leading to

01:47:42 7 the tunnel, correct?

01:47:43 8 A. Cognet discloses the first bore

01:47:53 9 extending along a first bore axis from a first

01:47:56 10 aperture to a second aperture.

01:47:58 11 Q. That was not my question. Your

01:47:59 12 answer is not responsive to my question.

01:48:01 13 My question is, you identified the

01:48:03 14 first aperture on Page 31 as the opening

01:48:05 15 leading to the tunnel, correct?

01:48:07 16 A. "Cognet describes an interior

01:48:16 17 surface at the opening of the nail member that

01:48:22 18 this allows the head of the screw to continue

01:48:24 19 any further in the nail recess to enable bone

01:48:27 20 compression to take place."

01:48:29 21 Q. That was not responsive to my

01:48:32 22 question. My question concerned what you've

01:48:34 23 identified as the first aperture. Your

01:48:38 24 responses have nothing to do with the first

01:48:40 25 aperture.

01:48:41 1 My question is, again, for the
01:48:50 2 third time, you identified the first aperture
01:48:52 3 on Page 31 as the opening leading to the
01:48:55 4 tunnel, correct?

01:48:56 5 MR. KAMHOLZ: Objection.
01:48:56 6 Foundation.

01:48:57 7 A. "Cognet discloses a bore at the
01:49:04 8 first aperture. Since there is a bore at the
01:49:06 9 first aperture, the bore will necessarily
01:49:08 10 comprise an interior surface at the first
01:49:11 11 aperture."

01:49:29 12 Q. Again, not responsive to my
01:49:31 13 question. Mr. Dominguez, do you think that
01:49:36 14 answer was responsive to my question?

01:49:37 15 A. I believe it is.

01:49:44 16 Q. How so does it answer my question
01:49:46 17 about the first aperture?

01:49:47 18 A. Well, "Cognet creates a
01:49:50 19 'countersink or shoulder' cavity recess inside
01:49:53 20 at the entrance to a bore hole, which is a
01:49:55 21 preferred manner to prevent a screw from
01:49:57 22 entering past the preferred penetration depth
01:50:02 23 of the screw."

01:50:04 24 Q. Where are you reading from now,
01:50:07 25 Mr. Dominguez?

01:50:08 1 A. Paragraph 74, fourth line down.
 01:50:14 2 "Cognet creates a 'countersink or shoulder.'"
 01:50:21 3 Q. Okay. I will just note that your
 01:50:22 4 answer was not responsive to my question.
 01:50:24 5 Is that countersink tapered in
 01:50:32 6 Cognet?
 01:50:33 7 A. I don't recall addressing that in
 01:50:39 8 my declaration.
 01:50:40 9 Q. I'm asking you that question now.
 01:50:43 10 Can you answer the question?
 01:50:43 11 A. I don't recall addressing that in
 01:50:46 12 my declaration.
 01:50:46 13 Q. Can you look at the figure on Page
 01:50:49 14 31 and answer whether or not you think it looks
 01:50:51 15 like the countersink is tapered?
 01:50:53 16 A. Cognet is creating a countersink
 01:50:55 17 or shoulder cavity recess inside the entrance
 01:50:59 18 to the bore hole.
 01:51:00 19 Q. Okay. Are you refusing to answer
 01:51:01 20 the question of whether or not the countersink
 01:51:03 21 is tapered?
 01:51:04 22 A. That's the answer to the best of
 01:51:05 23 my ability, addressing the question.
 01:51:07 24 Q. So you don't know whether or not
 01:51:11 25 Cognet discloses that the countersink is

01:51:15 1 tapered; is that right?

01:51:16 2 A. "Cognet creates a 'countersink or
01:51:21 3 shoulder' cavity recess inside the entrance to
01:51:23 4 a bore hole."

01:51:26 5 Q. That is not responsive to my
01:51:27 6 question. I will assume you cannot answer the
01:51:29 7 question.

01:51:32 8 The bottom portion of the tunnel
01:51:35 9 past the shoulder, which is the lower portion
01:51:39 10 of the T on Page 31, is that portion of the
01:51:42 11 tunnel tapered?

01:51:43 12 A. "Cognet creates a 'countersink or
01:52:00 13 shoulder' cavity recess inside the entrance to
01:52:02 14 a bore hole." That's the "preferred manner to
01:52:05 15 prevent the screw from entering past the
01:52:08 16 penetration depth of the screw."

01:52:09 17 Q. That answer is not responsive to
01:52:11 18 my question. I will assume you are unwilling
01:52:14 19 or unable to answer it, and I will move on.

01:52:29 20 Can a cylindrical have multiple
01:52:31 21 diameters?

01:52:31 22 A. With reference to what?

01:52:37 23 Q. Just your expertise.

01:52:41 24 A. A bored hole is created by a twist
01:52:54 25 drill.

01:52:58 1 Q. Have you completed your answer?

01:53:00 2 A. Yes. A bored hole is created by a

01:53:04 3 twist drill.

01:53:05 4 Q. And does that indicate whether a

01:53:09 5 cylindrical can have more than one diameter?

01:53:12 6 A. I don't recall addressing that in

01:53:26 7 my declaration.

01:53:27 8 Q. I'm asking you if you could answer

01:53:29 9 the question as an expert in this case.

01:53:33 10 A. "A bore hole is commonly created

01:53:36 11 using a straight drill that is spinning along

01:53:39 12 its drill axis of rotation."

01:53:40 13 Q. Again, does that indicate whether

01:53:42 14 a cylindrical can have more than one diameter?

01:53:48 15 A. "A bore hole is commonly created

01:53:56 16 using a straight drill that is spinning along

01:53:59 17 its drill axis of rotation."

01:54:01 18 Q. What is a straight drill? I asked

01:54:03 19 you this earlier, and I believe you weren't

01:54:04 20 able to answer the question then. Can you

01:54:07 21 answer that question now?

01:54:08 22 A. A straight drill?

01:54:09 23 Q. Yes. You just used the term

01:54:13 24 "straight drill," and I was wondering if you

01:54:15 25 could tell me what a straight drill is?

01:54:17 1 A. From the tip of the drill to the
01:54:24 2 top of the drill, the center line of the drill
01:54:28 3 is the axis of rotation.

01:54:30 4 Q. Isn't that the case for every
01:54:35 5 drill?

01:54:36 6 A. So "a bore hole is commonly
01:54:47 7 created using a straight drill that is spinning
01:54:50 8 along its drill axis of rotation."

01:54:52 9 Q. Okay. I think I've asked five
01:55:10 10 different times whether a cylindrical can have
01:55:11 11 more than one diameter. Is there anything else
01:55:13 12 you can add to the answers you've given so far
01:55:15 13 in response to that question?

01:55:16 14 A. I think I've addressed the
01:55:26 15 question, that a drill can be -- that a bore
01:55:29 16 hole is commonly created using a straight
01:55:33 17 drill, a straight drill that is spinning along
01:55:35 18 its drill axis of rotation.

01:55:36 19 Q. Okay. Again, does that indicate
01:55:38 20 whether or not a cylindrical can have more than
01:55:40 21 one diameter?

01:55:40 22 A. "A bore hole is commonly created
01:55:51 23 using a straight drill that is spinning along
01:55:55 24 the drill axis of rotation."

01:55:57 25 Q. That is not responsive to my

01:55:59 1 question. I will move on assume you're
 01:56:01 2 unwilling or can't answer my question.
 01:56:04 3 If we turn back to Paragraph 60,
 01:56:09 4 the bottom of Paragraph 60, which is on Page
 01:56:12 5 32, I'd like you to read out loud the last
 01:56:14 6 sentence beginning with, "Since there is a
 01:56:18 7 bore"?

01:56:18 8 A. "Since there is a bore at the
 01:56:21 9 first aperture, the bore will necessarily
 01:56:23 10 comprise an interior surface at the first
 01:56:26 11 aperture, thus disclosing this claim element."

01:56:37 12 Q. Do all bores have an interior
 01:56:39 13 surface?

01:56:54 14 A. In Figure 1 of Cognet shows the
 01:57:56 15 exterior surface of a head portion of the first
 01:58:01 16 member abutting the interior surface of the
 01:58:05 17 first bore at the first aperture.

01:58:05 18 Q. That was not responsive to my
 01:58:07 19 question. I will try to ask it again.

01:58:09 20 Do all bores have an interior
 01:58:11 21 surface?

01:58:11 22 A. The first member being the screw
 01:58:52 23 abuts the interior surface of the first bore at
 01:58:55 24 the first aperture. So there is an interior
 01:58:59 25 surface that is abutted by the first member at

01:59:03 1 the first bore.

01:59:09 2 Q. Okay. Again, that answer is not

01:59:12 3 responsive to my question.

01:59:13 4 Mr. Dominguez, are you having

01:59:14 5 trouble hearing me?

01:59:17 6 A. No. You're coming through loud

01:59:18 7 and clear.

01:59:19 8 Q. Excellent. Where were you just

01:59:24 9 reading from, Mr. Dominguez?

01:59:25 10 A. Paragraph 80.

01:59:27 11 Q. Okay. Thank you. If we turn to

01:59:51 12 your declaration, page -- you can look at

02:00:02 13 Paragraph 72 to 73, which are on Pages 39 to 40

02:00:07 14 of your declaration.

02:00:16 15 A. Yes, I'm there.

02:00:17 16 Q. Okay. And you state that Figure 1

02:00:21 17 of Cognet shows the head portion of the first

02:00:25 18 member resides in the first bore, correct?

02:00:27 19 A. The head portion of the first

02:00:34 20 member resides at least partially within the

02:00:38 21 first bore.

02:00:43 22 Q. I see it says "partially" in the

02:00:46 23 first sentence. In the second sentence, when

02:00:49 24 you talk about Figure 1, you don't say

02:00:52 25 "partially," right? You say "the head portion

02:00:55 1 of the first member residing within the first
 02:00:58 2 bore," correct? I'm not missing the word
 02:01:00 3 "partially" in the second sentence, correct?
 02:01:03 4 A. The second sentence says, "Figure
 02:01:04 5 1 of Cognet shows the head portion of the first
 02:01:06 6 member (shaded blue) residing within the first
 02:01:12 7 bore (shaded orange)."
 02:01:16 8 Q. Correct. And you don't say
 02:01:18 9 "partially residing" in that sentence, correct?
 02:01:18 10 A. I state it in the first sentence.
 02:01:29 11 "Claim 2 further limits Claim 1 by requiring
 02:01:32 12 the head portion of the first member reside at
 02:01:34 13 least partially within the first bore."
 02:01:40 14 Q. Again, not responsive to my
 02:01:42 15 question. The second sentence of Paragraph 72
 02:01:44 16 does not use the word "partially," correct?
 02:01:47 17 This is not intended to be a trick question.
 02:01:49 18 The word "partially" does not appear in the
 02:01:52 19 second sentence, correct?
 02:01:53 20 MR. KAMHOLZ: Objection. Form.
 02:01:54 21 A. I don't understand your question.
 02:02:03 22 Could you rephrase it?
 02:02:04 23 Q. Does the word "partially" appear
 02:02:07 24 in the second sentence of Paragraph 72?
 02:02:09 25 A. Figure 1 of Cognet shows the head

02:02:58 1 portion of the first member residing within the
02:03:00 2 first bore.

02:03:01 3 Q. So we can agree that the word
02:03:06 4 "partially" does not appear in the second
02:03:08 5 sentence of Paragraph 72?

02:03:11 6 A. "A POSA knows to 'seat' the
02:03:11 7 terminal end of the screw flush or below the
02:03:11 8 surface of bone to create a 'low-profile'
02:03:11 9 construct to prevent irritating
02:03:34 10 surrounding tissues."

02:03:34 11 So one skilled in the art would
02:03:36 12 know to seek internal end of the screw flush
02:03:39 13 or below the surface of the bone, so flush
02:03:43 14 or below the surface of the bone, to create
02:03:45 15 a low profile construct to prevent
02:03:47 16 irritating tissue.

02:03:48 17 Q. Mr. Dominguez, where are you
02:03:51 18 reading from here?

02:03:51 19 A. Paragraph 73.

02:03:54 20 Q. Okay.

02:03:56 21 A. Again, in Cognet's diagram above,
02:04:01 22 the countersink recess is shown that captures a
02:04:04 23 screw head to best sink the screw head
02:04:07 24 prominence inside the terminal end of the third
02:04:11 25 member.

02:04:12 1 Q. Again, your answer is not
02:04:13 2 responsive to my question, but I will move on.
02:04:16 3 Apparently we're having trouble agreeing on
02:04:21 4 even the most simplest matters.
02:04:23 5 So I'd like to direct your
02:05:03 6 attention to the figure I have on the screen
02:05:05 7 here, which is the figure at the top of Page 40
02:05:07 8 of your declaration.
02:05:08 9 Do you see that?
02:05:13 10 A. Yes.
02:05:13 11 Q. And you identify the first bore,
02:05:15 12 correct?
02:05:16 13 A. That figure is not representative
02:05:26 14 of the entire first bore.
02:05:28 15 Q. Understood. So you identify here
02:05:34 16 where you understand at least part of the first
02:05:36 17 bore to be, correct?
02:05:38 18 A. Starting at the first aperture to
02:05:44 19 the second aperture.
02:05:45 20 Q. Right. So in this figure, you
02:05:49 21 identify at least where at least part of the
02:05:52 22 first bore is, correct?
02:05:55 23 A. Yeah, I can see that.
02:05:57 24 Q. Okay. And you identify where the
02:05:59 25 first aperture is, correct?

02:06:01 1 A. There is a first aperture being
 02:06:04 2 indicated in that figure.
 02:06:05 3 Q. Okay. And the first aperture is
 02:06:08 4 the opening where that blue arrow is pointing,
 02:06:11 5 correct?
 02:06:12 6 A. Yes, that's where the blue arrow
 02:06:20 7 is pointing, the first aperture.
 02:06:22 8 Q. And that is the opening at the top
 02:06:24 9 of the first bore, correct?
 02:06:25 10 A. That is the first bore.
 02:06:30 11 Q. The first bore is the first
 02:06:35 12 aperture; is that your testimony?
 02:06:37 13 A. The first bore starts at the first
 02:06:40 14 aperture and terminates at the second aperture.
 02:06:50 15 Q. Okay. So the first aperture is
 02:06:52 16 like a diagonal line above the head of the
 02:06:55 17 first member, correct?
 02:06:56 18 A. Can you repeat your question?
 02:07:41 19 Q. Sure. The first aperture is the
 02:07:46 20 diagonal line above the head of the first
 02:07:48 21 member, correct?
 02:07:50 22 A. "Since the screw head is intended
 02:08:19 23 to partially reside inside the aperture of the
 02:08:21 24 third member, it is common in design to create
 02:08:26 25 an aperture cavity using a drill turned on the

02:08:29 1 same axis aligned with the bore through hole.

02:08:29 2 The cavity aperture created on the first bore

02:08:29 3 axis will ensure the screw head enters on the

02:08:29 4 same path to the desired depth until screw

02:08:45 5 abutment is reached as described in Claim 3. "

02:08:45 6 Q. Okay. Where are you reading from,

02:08:50 7 Mr. Dominguez?

02:08:50 8 A. Paragraph 78.

02:08:52 9 Q. And that was not responsive to my

02:08:54 10 question, though. So let me try to ask it a

02:08:56 11 different way.

02:08:57 12 Do you see the blue arrow in the

02:09:01 13 annotated figure at the top of Page 40?

02:09:04 14 A. Yes.

02:09:06 15 Q. What's that pointing to?

02:09:08 16 A. The first aperture.

02:09:12 17 Q. Okay. And how is the first

02:09:15 18 aperture depicted in the figure?

02:09:19 19 A. "A person skilled in the art would

02:09:19 20 design the aperture in this manner which

02:09:19 21 ensures that the first aperture is aligned on

02:10:30 22 the first bore axis. "

02:10:31 23 So the first aperture is the -- is

02:10:37 24 aligned on axis with the first bore.

02:10:43 25 Q. Where are you reading from now,

02:10:44 1 Mr. Dominguez?

02:10:45 2 A. The bottom of Paragraph 78.

02:10:47 3 Q. All right. That, unfortunately,
02:10:50 4 was also not responsive to my question, though.

02:10:53 5 My question being, how is the first aperture
02:10:56 6 depicted in the figure at the top of Page 40?

02:11:05 7 A. The first aperture is the -- is
02:11:10 8 aligned on axis with the bore with the first
02:11:14 9 bore axis. The first aperture is a first entry
02:11:24 10 to the bore, and the second aperture is the
02:11:27 11 exit to the bore.

02:11:28 12 Q. Mr. Dominguez, did you indicate
02:11:35 13 the first bore axis in the figure at the top of
02:11:41 14 Page 40?

02:11:41 15 A. Yes. I've also indicated it on --

02:11:44 16 Q. Wait. Hold on. You said you did
02:11:47 17 indicate the first bore axis in the figure at
02:11:51 18 the top of Page 40 that's on your screen right
02:11:54 19 now?

02:11:54 20 A. There's no indication of bore axis
02:11:59 21 on that figure.

02:12:00 22 Q. Okay. So why are we talking about
02:12:01 23 first bore axis when I'm talking about this
02:12:05 24 figure?

02:12:05 25 A. I'm using the first bore axis to

02:12:08 1 describe the first aperture.

02:12:10 2 Q. And I'm asking you in this figure,
02:12:14 3 which doesn't indicate where the first bore
02:12:16 4 axis is, if you can tell me what portion of the
02:12:19 5 figure is -- what portion of the figure depicts
02:12:24 6 the first aperture?

02:12:30 7 Now, I'm going to back up a second
02:12:31 8 and say, we have been talking about that blue
02:12:33 9 arrow, and my understanding is that that blue
02:12:36 10 arrow is pointing to a diagonal line there
02:12:39 11 above the head of the first member, right above
02:12:43 12 where the end of the first bore indicator is.

02:12:47 13 Is that what you're pointing to as
02:12:48 14 the first aperture?

02:12:49 15 A. The first aperture is the first
02:12:59 16 bore that you see in that figure.

02:13:02 17 Q. What is the blue arrow pointing
02:13:04 18 to?

02:13:09 19 A. That's the entrance to the first
02:13:11 20 aperture.

02:13:12 21 Q. Okay. Is it the diagonal line
02:13:18 22 above the first -- immediately above the head
02:13:20 23 of the first member?

02:13:22 24 A. Cognet makes it clear that the
02:13:26 25 very black line that runs up that nail is a

02:13:32 1 chamfered cut.

02:13:34 2 Q. Okay.

02:13:35 3 A. The first aperture coincides with
02:13:40 4 the first bore axis. That is the bore that's
02:13:45 5 running through the bore axis.

02:13:48 6 It's better described on Paragraph
02:13:51 7 77. The figure on Paragraph 77 shows the
02:13:59 8 entire picture on Page 43, showing a first
02:14:03 9 aperture running along a first bore axis.

02:14:07 10 Q. Is the first aperture in line with
02:14:11 11 the chamfered cut?

02:14:12 12 A. I don't understand your question.

02:14:16 13 Q. You mentioned the chamfered cut a
02:14:19 14 moment ago. Do you recall that?

02:14:21 15 A. The chamfered cut is the exterior
02:14:26 16 surface of the nail that's cut at a chamfer to
02:14:33 17 best match the bony surface geometry.

02:14:36 18 Q. And tell me how I can see the
02:14:40 19 chamfer in this picture? Can I see the chamfer
02:14:45 20 in the figure at the top of Page 40?

02:14:47 21 A. Do you see the black line that
02:14:50 22 runs from -- so in there do you see a top
02:14:56 23 surface, a curvilinear line just above the blue
02:15:03 24 arrow, there's a curvilinear line?

02:15:07 25 Q. Yes, I see.

02:15:09 1 A. Cognet, that's represented by the
02:15:11 2 bone surface.

02:15:12 3 Q. I understand.

02:15:12 4 A. Then the next line, curvilinear
02:15:16 5 line that almost looks parallel to that first
02:15:20 6 line, that's the surface of the nail which
02:15:22 7 Cognet intends to try to create a chamfer
02:15:26 8 purposely to match a surface of the bone, so
02:15:29 9 that when the entire nail is recessed or
02:15:33 10 positioned in bone, both surfaces are in
02:15:38 11 approximation to one another.

02:15:39 12 Q. Okay. And is the first aperture
02:15:41 13 in that chamfered surface?

02:15:45 14 A. The first aperture runs through
02:15:47 15 the axis, the first bore axis. It starts along
02:15:56 16 the -- it starts along the surface of the nail,
02:16:00 17 this top surface of the nail.

02:16:03 18 Q. Okay. Is it at the top surface of
02:16:06 19 the nail?

02:16:06 20 A. It is at the head of the -- this
02:16:12 21 bore is at -- let me go back a second and look
02:16:29 22 something up.

02:17:07 23 This "Figure 1 of Cognet shows the
02:17:09 24 head portion of the first member (shaded blue)
02:17:12 25 residing within the first bore (shaded

02:17:14 1 orange). "

02:17:15 2 Q. Okay. And what about the

02:17:18 3 aperture?

02:17:23 4 MR. KAMHOLZ: Objection. Form.

02:17:24 5 A. "Claim 3 further limits claim 2 by

02:17:24 6 requiring the exterior surface of the head

02:17:24 7 portion of the first member abut the interior

02:17:58 8 surface of the first bore at the first

02:17:58 9 aperture. "

02:18:02 10 Q. Where are you reading from now,

02:18:04 11 Mr. Dominguez?

02:18:04 12 A. Paragraph 74.

02:18:06 13 Q. Okay. I'm going to direct your

02:18:10 14 attention to the figure that you put in your

02:18:14 15 declaration at the top of Page 40 and that you

02:18:16 16 annotated, and I'm still trying to get an

02:18:19 17 answer as to what you're indicating in this

02:18:21 18 figure. So again, your answer was not

02:18:24 19 responsive, so I'm going to try one more time.

02:18:27 20 Can you confirm for me whether or

02:18:29 21 not the first aperture indicated in the

02:18:33 22 annotated figure at the top of Page 40 is

02:18:41 23 represented by that diagonal line immediately

02:18:43 24 above the head of the first member, and in line

02:18:47 25 with the chamfer at the top of the nail?

02:18:50 1 A. "The exterior surface of the head
02:19:01 2 portion of the first member," the nail, "abut
02:19:06 3 the interior surface of the first bore at the
02:19:09 4 first aperture."

02:19:18 5 Q. That answer was not responsive.
02:19:20 6 Again, I'm going to assume you are either
02:19:22 7 unwilling or unable to answer the question, and
02:19:24 8 I'm going to move on.

02:19:52 9 Let's turn to Page 43. I believe
02:19:54 10 you referred to this figure earlier, Mr.
02:19:59 11 Dominguez. I'm talking about the figure in
02:20:02 12 Paragraph 77, and here I believe you were
02:20:07 13 directing -- you were referring to this figure
02:20:10 14 because it identifies the first aperture and
02:20:14 15 the first bore axis, and you were talking about
02:20:17 16 how the first aperture is aligned on the first
02:20:20 17 bore axis.

02:20:20 18 Do you recall that, Mr. Dominguez?

02:20:22 19 A. Yes.

02:20:22 20 Q. Great. So here I believe you are,
02:20:27 21 again, indicating that the first aperture is
02:20:31 22 that diagonal line above the head of the screw,
02:20:35 23 and that's what I believe is circled in red.

02:20:37 24 Can you confirm that for me?

02:20:40 25 A. What I'm saying here is the center

02:20:51 1 of the first aperture is in line with the first
02:20:53 2 bore axis, making them aligned.

02:20:55 3 Q. I understand, Mr. Dominguez.
02:20:57 4 Again, that's not responsive to my question. I
02:20:59 5 will try to ask it one more time.

02:21:01 6 I'm trying to get a sense of what
02:21:03 7 you've identified as the first aperture in your
02:21:05 8 declaration. Can you give me any -- can you
02:21:09 9 confirm that what I understand is what it looks
02:21:11 10 like you've both pointed at and circled
02:21:14 11 throughout your declaration, the first aperture
02:21:16 12 is, in fact, the first aperture, as I
02:21:18 13 understand it, which is the diameter line above
02:21:20 14 the screw head? Can you confirm that or not?

02:21:22 15 A. "The" first "cavity aperture
02:21:26 16 created on the first bore axis will ensure the
02:21:29 17 head enters the same path to the desired depth
02:21:31 18 until the screw abutment is reached as
02:21:34 19 described in Claim 3."

02:21:35 20 Q. Okay. You're reading from
02:21:36 21 Paragraph 78 now, Mr. Dominguez?

02:21:39 22 A. "The cavity aperture created on
02:21:41 23 the first bore axis will ensure that the screw
02:21:44 24 head enters on the same path to the desired
02:21:46 25 depth until screw abutment is reached as

02:21:50 1 described in Claim 3. "

02:21:51 2 Q. So you're reading from Paragraph
02:21:53 3 78, correct, Mr. Dominguez?

02:21:54 4 A. I am.

02:22:00 5 Q. That's, again, not responsive to
02:22:02 6 my question. I will assume you're either
02:22:04 7 unable or unwilling to answer my question. I
02:22:08 8 will move on.

02:22:41 9 So if we turn to Paragraphs 74 and
02:22:56 10 75 of your declaration, which are on Pages 40
02:22:57 11 to 42, and this is the part of your declaration
02:22:59 12 where you address Claim 3. Hold on a second.

02:23:35 13 So if you look at Paragraph 74, do
02:23:38 14 you see, "Claim 3 further limits," the first
02:23:41 15 sentence of Paragraph 74, "further limits Claim
02:23:45 16 2 by requiring the exterior surface of the head
02:23:48 17 portion of the first member abut the interior
02:23:50 18 surface of the first bore at the first
02:23:52 19 aperture. "

02:23:53 20 Do you see that?

02:23:53 21 A. Yes.

02:23:54 22 Q. In fact, we can look at the patent
02:24:05 23 just to confirm that's what Claim 3 recites.
02:24:15 24 So let's go to Claim 3, just so we're all on
02:24:18 25 the same page. So I'm going to stop sharing

02:24:21 1 that and I'm going to start sharing this.

02:24:25 2 Do you see -- you'll see, Mr.

02:24:29 3 Dominguez, at the top of the page I've put on

02:24:31 4 the screen, U.S. Patent No. 11,298,166, you

02:24:37 5 understand this is the '166 patent, correct?

02:24:39 6 A. Yes.

02:24:40 7 Q. If I scroll down in Column 15,

02:24:43 8 Lines 48 to 50, here again, we see consistent

02:24:46 9 with what you wrote in your declaration, I

02:24:47 10 believe, which is Claim 3 recites, "The

02:24:53 11 assembly of Claim 2, wherein the exterior

02:24:57 12 surface of the head portion of the first member

02:24:59 13 abuts the interior surface of the first bore at

02:25:04 14 the first aperture."

02:25:05 15 Do you see that?

02:25:06 16 A. Yes.

02:25:06 17 Q. It says "the interior surface of

02:25:22 18 the first bore at the first aperture," and, in

02:25:28 19 fact, on Page 32 of your declaration, if we

02:25:31 20 jump to there, you identify where that is,

02:25:33 21 because the first bore -- excuse me -- the

02:25:44 22 interior surface of the first bore at the first

02:25:46 23 aperture is also recited in Claim 1.

02:25:50 24 So if we go to Page 32, put that

02:25:54 25 on the screen, you'll see you identify it as

02:26:00 1 with a purple arrow.
02:26:01 2 Do you see the figure now on your
02:26:03 3 screen at the bottom of Page 32? Do you see
02:26:05 4 that? It looks like -- can you confirm you're
02:26:10 5 pointing to the interior surface of the, I
02:26:18 6 guess, tunnel of the Cognet tunnel close to
02:26:23 7 where you circled the first aperture?

02:26:25 8 Do you see that?

02:26:26 9 A. Cognet discusses the bore at the
02:26:29 10 first aperture.

02:26:29 11 Q. Right. And that's what you're
02:26:31 12 depicting in this figure at the bottom of Page
02:26:34 13 32, correct?

02:26:34 14 A. Yes. Since there is a bore at the
02:26:36 15 first aperture, the bore will necessarily
02:26:38 16 comprise an interior surface at the first
02:26:41 17 aperture, thus disclosing this claim element.

02:26:44 18 Q. And you're pointing to an area of
02:26:47 19 the bore that's right adjacent to essentially
02:26:50 20 the first aperture, correct?

02:26:51 21 A. It says there is a bore at the
02:26:55 22 first aperture. The bore will necessarily
02:26:57 23 comprise of an interior surface at the first
02:27:01 24 aperture.

02:27:02 25 Q. Right, which is what you're

02:27:03 1 depicting here on Page 32, correct?

02:27:05 2 A. Yes. There is a bore and there's
02:27:06 3 an interior surface.

02:27:09 4 Q. And you're pointing to what you
02:27:11 5 identify is a portion of the interior surface
02:27:14 6 of the bore, which is right next to the first
02:27:17 7 aperture, correct? That's what it looks like
02:27:19 8 to me on Page 32.

02:27:21 9 A. Yes.

02:27:22 10 Q. Okay. All right. If we turn back
02:27:38 11 to Paragraph 73, I think it is, on Page 40, I
02:27:46 12 believe -- no, I'm sorry. I want to go to Page
02:27:49 13 42. The bottom of Paragraph 75. The text of
02:27:54 14 which completes on Page 41, and then there's an
02:27:57 15 annotated image on Page 42, which I put on the
02:28:03 16 screen.

02:28:03 17 Do you see it?

02:28:04 18 A. Yes.

02:28:05 19 Q. All right. So here, again you
02:28:11 20 have a blue arrow identifying where the first
02:28:13 21 aperture is, correct?

02:28:17 22 A. Yes.

02:28:18 23 Q. But then you have these two green
02:28:21 24 arrows, and the green arrows you identify as
02:28:24 25 where the head of the first member abuts the

02:28:26 1 first aperture, correct?

02:28:27 2 A. Yes, I show those green arrows.

02:28:29 3 Q. Okay. So why are those green

02:28:32 4 arrows pointing to the shoulder as where the

02:28:34 5 member abuts the first aperture if the first

02:28:36 6 aperture is where the blue arrow is indicated?

02:28:40 7 A. Can you repeat your question?

02:28:47 8 It's a little confusing.

02:28:49 9 Q. Sure. Do you see the green

02:28:52 10 arrows?

02:28:54 11 A. Yes.

02:28:54 12 Q. You're identifying that as where

02:28:56 13 the head of the first member is abutting the

02:28:58 14 first aperture, correct?

02:28:59 15 A. Yeah, I mean, "Cognet further

16 discloses that the head of the screw (first

17 member) has a larger diameter than the diameter

18 of the tunnel (first bore) which makes it

19 possible for the head to butt up against the

20 smaller diameter tunnel to stop the

21 progression of the screw and obtain a

02:29:27 22 compression effect at the fracture site."

02:29:27 23 Q. Where are you reading from now,

02:29:27 24 Mr. Dominguez?

02:29:29 25 A. That is midway in Paragraph 75. I

02:29:32 1 believe it's the second sentence.

02:29:40 2 Q. Okay. I don't believe any of that

02:29:41 3 was responsive to my question.

02:29:42 4 But we can agree that the green

02:29:42 5 arrows are pointing to where you're indicating

02:29:45 6 the head of the first member abuts the first

02:29:48 7 aperture, correct? That is what it says on

02:29:50 8 Page 42, correct?

02:29:51 9 A. The head of the first member

02:29:53 10 abutting the first aperture.

02:29:54 11 Q. So that's correct, right?

02:29:57 12 A. Yeah, I mean, bear in mind, Mr.

02:30:01 13 Lindenbaum, that this is a cross section. So

02:30:07 14 the head member abuts the first aperture along

02:30:12 15 an entire surface area, not just two points

02:30:16 16 where the green arrows are pointing to. It's

02:30:18 17 an entire surface area. There's a surface area

02:30:22 18 abutment taking place.

02:30:23 19 Q. Yes. We talked about the lower

02:30:25 20 shoulder of the head, correct, abuts the

02:30:28 21 shoulder, correct?

02:30:28 22 A. Yes.

02:30:30 23 Q. And those would be like two flat

02:30:32 24 surfaces meeting each other, correct?

02:30:34 25 A. In fact, it's actually a diameter,

02:30:39 1 because the head of the screw is wrapped. It
02:30:41 2 has a diameter.

02:30:42 3 Q. Right. But there's a thickness.
02:30:44 4 So there's like kind of a ring that goes around
02:30:47 5 that matches a flat surface of the shoulder,
02:30:50 6 correct?

02:30:50 7 A. Yes.

02:30:51 8 Q. Okay. So I guess I'm confused
02:30:58 9 where you're identifying the first aperture.
02:31:01 10 That's my question. So to me it looks like
02:31:02 11 you're identifying the first aperture as being
02:31:04 12 in two different places.

02:31:07 13 The first place I see we talked
02:31:09 14 about earlier, which is where the blue arrow is
02:31:11 15 pointing, which is that diagonal line above the
02:31:15 16 head. The second place you seem to be
02:31:17 17 indicating the first aperture is, is where the
02:31:19 18 green arrows are pointing, because you're
02:31:21 19 saying that's where the first member abuts the
02:31:26 20 first aperture.

02:31:28 21 So I guess my question is, are you
02:31:28 22 indicating that the green arrows are where the
02:31:31 23 first aperture is?

02:31:33 24 A. There are only -- Cognet describes
02:31:36 25 only two apertures, a first aperture and a

02:31:39 1 second aperture.

02:31:40 2 Q. Okay.

02:31:40 3 A. So the bore -- the through bore
02:31:46 4 runs through the axis of these apertures, the
02:31:51 5 central axis of these apertures.

02:31:53 6 Q. And where is the first aperture,
02:31:55 7 then? That's my only question. Where are you
02:31:56 8 indicating the first aperture is?

02:32:04 9 A. "Cogent further discloses that the
10 head of the screw (first member) has a larger.
11 Diameter than the diameter of the tunnel
12 (first bore) which makes it possible for the
13 head to butt up against the smaller diameter
14 tunnel to stop the progression of the screw
15 and obtain a compression effect at the
02:32:24 16 fracture site."

02:32:24 17 Q. You're reading again from
02:32:26 18 Paragraph 75?

02:32:28 19 A. Yes.

02:32:29 20 Q. Okay. Does paragraph -- does that
02:32:34 21 sentence tell me where the first aperture is?

02:32:36 22 A. "Cognet creates a 'countersink or
02:32:36 23 shoulder' cavity recess inside at the entrance
02:32:36 24 to a bore hole, which is a preferred manner
02:32:36 25 to prevent a screw from entering past the

02:32:55 1 preferred penetration depth of the screw. "

02:32:56 2 Q. Now you're reading from Paragraph
02:32:59 3 74, correct?

02:33:01 4 A. Yes.

02:33:01 5 Q. Okay. I believe THAT neither of
02:33:03 6 those sentences are responsive to my question.
02:33:05 7 So I guess unless you think they are, can you
02:33:07 8 tell me how either one of those sentences
02:33:10 9 indicates to me where you believe the first
02:33:12 10 aperture is in the figure on Page 42?

02:33:18 11 A. "Since the screw head is intended
12 to partially reside inside the aperture of the
13 third member it is common in design to create
14 the aperture cavity using a drill turned on
15 this same axis (aligned) as the bored
16 through-hole. The cavity aperture created on
17 the first bore axis will ensure the screw head
18 enters on the same path to the desire depth
19 until screw abutment is reached as described in
02:34:22 20 Claim 3. "

02:34:22 21 Q. And what were you just reading
02:34:31 22 there, Mr. Dominguez?

02:34:33 23 A. Paragraph 78.

02:34:41 24 Q. Again, I do not believe that's
02:34:42 25 responsive to my question, so I'm going to

02:34:45 1 assume you're unwilling or unable to answer my
02:34:47 2 question, and I will move on, unless you have
02:34:54 3 anything further to add, Mr. Dominguez?

02:34:57 4 A. I have nothing further to add.

02:34:58 5 Q. Mr. Dominguez, I'm going to
02:35:29 6 actually ask the question one more time so I
02:35:31 7 have a clear record here.

02:35:32 8 Can you indicate to me where on
02:35:37 9 the figure as depicted on Page 42 -- I'm going
02:35:41 10 to start again.

02:35:42 11 Can you indicate to me where in
02:35:45 12 the picture -- one more time.

02:35:47 13 Can you indicate to me where on
02:35:49 14 the figure depicted on Page 42 the first
02:35:53 15 aperture is?

02:35:55 16 A. "Cognet shows the exterior surface
02:36:33 17 of the head portion of the first member
02:36:35 18 abutting the interior surface of the first bore
02:36:38 19 at the first aperture."

02:36:40 20 Q. And is that where the green arrows
02:36:45 21 are pointed?

02:36:45 22 A. "Abut refers to touching or making
02:37:54 23 a contact along an edge. Cognet creates a
02:37:57 24 'countersink or shoulder' cavity recess inside
02:38:01 25 at the entrance to a bore hole, which is a

02:38:03 1 preferred manner to prevent a screw from
02:38:05 2 entering past the preferred penetration depth
02:38:07 3 of the screw. "

02:38:08 4 Q. And again, you're reading again
02:38:21 5 from Paragraph 74, right?

02:38:23 6 A. Yes.

02:38:24 7 Q. I think we might have touched on
02:39:04 8 this before, but now that we're in this
02:39:07 9 paragraph, the sentence you just read, "Cognet
02:39:10 10 creates a 'countersink or shoulder' cavity
02:39:13 11 recess inside the entrance to a bore hole. "

02:39:16 12 Do you see that?

02:39:17 13 A. Yes.

02:39:18 14 Q. Is "countersink" the same as
02:39:21 15 "shoulder" here?

02:39:27 16 A. I think we've discussed this
02:39:28 17 before. Both of these features are recesses,
02:39:32 18 and countersink or shoulder are more related to
02:39:36 19 the geometry. Countersink being a diametrical
02:39:42 20 hole tapered, shoulder being a diametrical hole
02:39:46 21 or shoulder.

02:39:47 22 So both are methods that Cognet
02:39:52 23 creates to create a cavity recess in the
02:39:55 24 entrance to a bore hole.

02:39:56 25 Q. Do you indicate in your report

02:40:04 1 where the countersink or shoulder are in

02:40:20 2 Cognet?

02:40:20 3 A. Its depicted on either the top of

02:40:41 4 Page 40, in that figure, or it's depicted in

02:40:44 5 the top of Page 42, or the top of Page 43.

02:40:51 6 Q. Is it labeled in any figure in

02:40:53 7 your report?

02:40:55 8 A. Not to my recollection.

02:41:08 9 Q. So it looks like in Paragraph 74,

02:41:20 10 I just want to make sure I've got the

02:41:22 11 nomenclature here, you state in that sentence,

02:41:26 12 "'countersink or shoulder' cavity recess." And

02:41:31 13 in the paragraph above it, and I will go back,

02:41:34 14 and now I'm on Page 40, so I was just talking

02:41:37 15 about Paragraph 74 says, "Cognet creates a

02:41:40 16 'countersink or shoulder' cavity recess," and

02:41:45 17 then in Paragraph 73, three lines from the

02:41:47 18 bottom, in the last sentence, you used the term

02:41:50 19 "countersink-recess," and it's hyphenated.

02:41:57 20 I just want to confirm you're

02:41:58 21 using the term "countersink-recess" in the same

02:42:01 22 way you're using "countersink cavity recess" in

02:42:06 23 Paragraph 74; is that right?

02:42:07 24 A. In both instances, "countersink,"

02:42:10 25 whether it's hyphenated or not, to me it's the

02:42:12 1 same word.

02:42:13 2 Q. Is there any difference between
02:42:14 3 "countersink cavity recess" and a
02:42:17 4 "countersink-recess"?

02:42:17 5 A. As I explained earlier, a drill
02:42:25 6 spinning about its center of rotation removes
02:42:27 7 material as it creates a bore. So that by
02:42:32 8 definition creates a cavity.

02:42:43 9 Q. Okay. Is there a difference
02:42:45 10 between a "countersink cavity recess" and a
02:42:48 11 "countersink-recess"?

02:42:50 12 A. Not that I could at this point
02:43:02 13 define differently.

02:43:03 14 Q. Okay. Then in Paragraph 74,
02:43:33 15 again, four lines down, we were talking about
02:43:35 16 the sentence that says, "Cognet creates a
02:43:37 17 'countersink or shoulder' cavity recess."

02:43:42 18 Then the next sentence in the same
02:43:44 19 paragraph, the sentence begins, "The internal
02:43:46 20 shoulder."

02:43:47 21 So is the internal shoulder the
02:43:54 22 same as the shoulder cavity recess?

02:43:56 23 A. Within the context of Cognet, the
02:43:58 24 countersink or a shoulder cavity recess inside
02:44:03 25 at the entrance to a bore hole, which is the

02:44:06 1 preferred manner that a POSA would use to
02:44:08 2 prevent the screw from entering, past the
02:44:11 3 preferred penetration of the screw, the
02:44:13 4 internal shoulder serves to further block entry
02:44:16 5 of the screw at the moment that the screw head
02:44:20 6 contacts the internal surface of the shoulder.

02:44:23 7 Q. Is the internal shoulder a
02:44:25 8 different element or feature than the
02:44:28 9 countersink or shoulder cavity recess or are
02:44:31 10 they the same thing?

02:44:33 11 A. We are describing Cognet's
02:44:36 12 creating a countersink or a shoulder cavity,
02:44:39 13 and then this internal shoulder, that's a
02:44:42 14 continuation of the shoulder that he has
02:44:44 15 created.

02:44:45 16 So the internal shoulder serves to
02:44:47 17 block further entry of the screw at the moment
02:44:50 18 the screw head contacts the internal surface of
02:44:52 19 the shoulder.

02:44:53 20 Q. So is the internal shoulder part
02:44:54 21 of the shoulder cavity recess?

02:44:56 22 A. Yeah, this is intended to be all
02:45:02 23 one theory of thought here, with Cognet
02:45:13 24 creating a countersink or a shoulder cavity
02:45:16 25 recess inside the entrance to a bore hole, and

02:45:21 1 the internal shoulder serves to block further
02:45:24 2 entry of the screw at the moment the screw head
02:45:27 3 contacts the internal surface of the shoulder.

02:45:30 4 So we're describing here -- Cognet
02:45:35 5 is describing a countersink or a shoulder
02:45:37 6 cavity.

02:45:37 7 Q. Does the internal shoulder have a
02:45:44 8 surface that faces the first aperture?

02:45:48 9 A. Can you repeat the question?

02:46:25 10 Q. Does the internal shoulder have a
02:46:29 11 surface that faces the first aperture?

02:46:33 12 A. "A bore hole is commonly created
13 using a straight drill that is spinning along
14 the drill's axis of rotation. The rotational
15 axis of the drill can be inclined at an angle
16 relative to the surface being cut to establish
17 a drill path angle or direction to the surface
18 of the third member. The resulting internal
19 size of the bore hole is of the same size as
02:48:09 20 the drill used to create the hole."

02:48:09 21 Q. Where are you reading from now,
02:48:13 22 Mr. Dominguez?

02:48:13 23 A. I'm reading Paragraph 60.

02:48:18 24 Q. Okay. That answer was not
02:48:22 25 responsive to my question. I'll ask it again.

02:48:24 1 Does the internal shoulder have a
02:48:26 2 surface that faces the first aperture?

02:48:27 3 A. What do you mean by the word
02:48:55 4 "faces"?

02:48:56 5 Q. What about that word don't you
02:49:03 6 understand?

02:49:04 7 A. You're describing something in
02:49:07 8 relation to something else. How are you
02:49:10 9 describing the term "faces"?

02:49:14 10 Q. Do you know what it means when a
02:49:16 11 surface faces a direction?

02:49:18 12 A. You're describing what, a face in
02:49:24 13 an axis?

02:49:25 14 Q. I'm describing a surface that
02:49:28 15 faces a direction. Let me back up.

02:49:34 16 Does the internal shoulder have a
02:49:37 17 surface?

02:49:38 18 A. Yes. We've established that the
02:49:40 19 internal hole has a surface. "A bore hole is
02:49:46 20 commonly created using a straight drill that's
02:49:49 21 spinning on the drill's axis of rotation."

02:49:51 22 Q. I'm not talking about a bore hole.
02:49:52 23 I'm talking about a shoulder, an internal
02:49:55 24 shoulder. Are those things the same to you, a
02:49:57 25 bore and an internal shoulder?

02:49:59 1 A. Cognet describes a countersink or
02:50:08 2 a counterbore. That establishes, as we said
02:50:13 3 earlier, establishes a -- let me get to that
02:50:18 4 exact paragraph.

02:50:24 5 Q. I think you might be looking for
02:50:25 6 Paragraph 74.

02:50:27 7 A. "Cognet creates a 'countersink or
02:50:38 8 shoulder' cavity recess inside the entrance to
02:50:40 9 a bore hole, which is a preferred manner to
02:50:43 10 prevent the screw from entering past the
02:50:45 11 preferred penetration depth of the screw. The
02:50:48 12 internal shoulder serves block further entry of
02:50:52 13 the screw at the moment when the screw head
02:50:53 14 contacts the internal surface of the shoulder."

02:50:53 15 "Figure 1 of Cognet shows that the
02:51:12 16 exterior surface of the head portion of the
02:51:12 17 first member abutting the interior surface of
02:51:15 18 the first bore at the first aperture."

02:51:17 19 Q. Okay. So now you've read most of
02:51:20 20 Paragraph 74 and now the first sentence of 75,
02:51:24 21 correct?

02:51:25 22 My question is, does the internal
02:51:27 23 shoulder have a surface? It must, right?

02:51:31 24 A. It's a -- we've established it's
02:51:37 25 counterbore or a countersink.

02:51:40 1 Q. Well, right. But there is a --
02:51:50 2 there is a shoulder where the two portions of
02:51:58 3 the tunnel meet, right, the larger diameter and
02:52:00 4 the smaller diameter, there's a shoulder there,
02:52:02 5 right?

02:52:02 6 A. Yes.

02:52:07 7 Q. Right. And that shoulder has a
02:52:08 8 surface that the head of the screw abuts,
02:52:13 9 correct?

02:52:14 10 A. Yes. "Cognet creates a
02:52:21 11 'countersink or shoulder' cavity recess inside
02:52:23 12 the entrance to a bore which is a preferred
02:52:27 13 method to prevent the screw from entering past
02:52:30 14 the preferred penetration depth of the screw."
02:52:37 15 This shoulder, "the internal shoulder serves to
02:52:40 16 block further entry of the screw at the moment
02:52:44 17 when the screw head contacts the internal
02:52:45 18 surface of the shoulder."

02:52:46 19 Q. Right. And the internal shoulder
02:52:48 20 serves to block further entry of the screw
02:52:51 21 because it has a surface that the head of the
02:52:55 22 screw presses against, correct?

02:52:58 23 A. "The internal shoulder serves to
02:53:02 24 block further entry of the screw at the moment
02:53:05 25 when the screw head contacts the internal

02:53:07 1 surface of the shoulder."

02:53:09 2 Q. Right. So my question is, that
02:53:22 3 internal surface of the shoulder faces the
02:53:25 4 first aperture, correct?

02:53:27 5 A. If a drill is used on axis, a
02:53:44 6 cutting tool rotating along its axis, that
02:53:48 7 shoulder will be on axis with the cutting tool
02:53:56 8 making the hole.

02:53:57 9 Q. Let me try again. The internal
02:54:01 10 surface of the shoulder faces the first
02:54:04 11 aperture, correct?

02:54:04 12 A. If a drill, a cutting drill,
02:54:21 13 turning or spinning on its axis of rotation
02:54:24 14 through the center of the bore will produce a
02:54:27 15 shoulder that is on axis with the cutting tool.

02:54:35 16 Q. Okay. That's not responsive to my
02:54:37 17 question. I assume you're either unwilling or
02:54:41 18 unable to answer the question. I will move on.

02:54:44 19 Looking at Cognet, Figure 1, and I
02:54:47 20 will put that on the screen. Do you see Cognet
02:55:00 21 Figure 1 on the screen?

02:55:01 22 A. Yes.

02:55:01 23 Q. And can the tunnel, you've
02:55:14 24 identified as the first bore in Cognet, be
02:55:19 25 drilled out in one pass with the drill?

02:55:27 1 A. I don't recall addressing that in
02:55:29 2 my declaration.

02:55:30 3 Q. You may not have, but can you
02:55:34 4 answer the question?

02:55:35 5 A. You're referring to methods of
02:55:36 6 manufacturing, you know, different cutting
02:55:40 7 tools, different shapes of drills. That's not
02:55:45 8 what I addressed in this declaration.

02:55:46 9 Q. Can you answer my question?

02:55:48 10 A. Cognet describes using a twist
02:56:07 11 drill from the first aperture to the second
02:56:12 12 aperture along an axis, central axis, that
02:56:15 13 creates a bore in the first bore of the nail.

02:56:32 14 Q. Where are you reading from now,
02:56:37 15 Mr. Dominguez?

02:56:38 16 A. I think I just paraphrased
02:56:41 17 everything I have been talking to you about.

02:56:43 18 Q. What is a twist drill?

02:56:47 19 A. A twist drill is a tool, cutting
02:56:50 20 tool, used to create a hole or a bore.

02:56:52 21 Q. Okay. And you said Cognet
02:56:55 22 describes using a twist drill from the first
02:56:58 23 aperture to the second aperture along an axis
02:57:02 24 that creates a bore. Where does Cognet
02:57:05 25 describe that using a twist drill?

02:57:08 1 A. For example, a bore is a
02:57:14 2 cylindrical hole made by the spinning rotation
02:57:18 3 of a twist drill cutting tool.

02:57:20 4 Q. Okay. But you said that Cognet
02:57:21 5 discloses using a twist drill. Does Cognet
02:57:24 6 disclose using a twist drill?

02:57:26 7 A. I don't recall addressing that in
02:57:31 8 my declaration.

02:57:32 9 Q. Well, you just said under oath at
02:57:40 10 your deposition. So do you know whether or not
02:57:42 11 that's correct?

02:57:43 12 A. Cognet describes a tunnel or a
03:00:08 13 bore in the nail, and as a POSA would
03:00:13 14 understand it, that the tunnel or a hole is
03:00:17 15 created with standard machining practices using
03:00:22 16 a cutting drill, a cutting twist drill, to
03:00:26 17 create a hole or a bore. That is the likely
03:00:29 18 preferred method.

03:00:30 19 So as a POSA, those were my words.
03:00:36 20 I used the word "twist drill," but that is
03:00:39 21 likely the method that Cognet intended to
03:00:42 22 create his tunnel.

03:00:45 23 Q. Okay. Let me just be clear. You
03:00:49 24 testified moments ago that Cognet describes
03:00:52 25 using a twist drill from the first aperture to

03:00:54 1 the second aperture along an axis that creates
03:00:56 2 a bore.

03:00:57 3 Would you like to withdraw your
03:01:00 4 testimony that Cognet describes using a twist
03:01:05 5 drill?

03:01:06 6 A. My declaration is that Cognet is
03:01:51 7 creating a tunnel or bore, and the most obvious
03:01:58 8 method of creating that is using a twist drill
03:02:03 9 to create a tunnel or bore.

03:02:08 10 So that is my testimony that that
03:02:14 11 is the method that Cognet would have used. I
03:02:21 12 don't see here that he is actually describing
03:02:24 13 his method, the method of making that hole.

03:02:27 14 Q. What is a twist drill?

03:02:30 15 A. A twist drill is a drill bit that
03:02:35 16 is intended to cut into material and create a
03:02:40 17 hole or a bore.

03:02:44 18 Q. Could the tunnel disclosed in
03:02:49 19 Cognet be made with one pass of a twist drill?

03:02:55 20 A. As I said earlier, that goes
03:02:57 21 beyond -- that has to do more specifically to
03:03:01 22 methods of manufacturing and designs of twist
03:03:05 23 drills, which I did not address in my
03:03:10 24 declaration.

03:03:10 25 Q. So am I correct that you don't

03:03:12 1 know the answer to that question?

03:03:13 2 A. I don't recall addressing that in
03:03:17 3 my declaration.

03:03:18 4 Q. That's not my question. Am I
03:03:20 5 correct that you don't know the answer to my
03:03:22 6 question?

03:03:22 7 A. I did not address that in my
03:03:46 8 declaration.

03:03:46 9 Q. You're unwilling to answer my
03:03:50 10 question; is that right?

03:03:51 11 A. I did not -- I did not address...

03:03:59 12 Q. You mentioned twist drills in your
03:04:01 13 declaration, and you just testified that a POSA
03:04:05 14 going out would use a twist drill to create the
03:04:08 15 tunnel disclosed in Cognet.

03:04:10 16 So you've already given a lot of
03:04:11 17 testimony about twist drills and manufacture of
03:04:16 18 Cognet's tunnel. But for some reason you want
03:04:18 19 to stop short of answering my question about
03:04:21 20 whether or not one pass of a twist drill will
03:04:23 21 create the tunnel disclosed in Cognet; is that
03:04:26 22 right?

03:04:26 23 A. I do not recall addressing how
03:04:34 24 multiple or one twist drill is going to do this
03:04:38 25 operation. So it's beyond the testimony that I

03:04:42 1 provided. But we know that a twist drill is a
03:04:45 2 tool used to create a hole or bore.

03:04:48 3 Q. Is a twist drill used to create a
03:04:54 4 cylindrical hole?

03:04:55 5 A. "Cognet further discloses that the
03:05:59 6 head of the screw, first member, has a larger
03:06:02 7 diameter than the diameter of the tunnel, first
03:06:05 8 bore, which makes it possible for the head to
03:06:07 9 butt up against the smaller diameter tunnel to
03:06:10 10 stop the progression of the screw and obtain a
03:06:14 11 progression effect at the fracture site."

03:06:16 12 Q. You're reading from Paragraph 75,
03:06:18 13 correct?

03:06:18 14 A. Mm-hmm.

03:06:28 15 Q. Again, that answer is not
03:06:29 16 responsive to my question, and if you're going
03:06:31 17 to read from your report, then I believe you're
03:06:34 18 correct that you did not explicitly answer the
03:06:38 19 question I'm asking currently. And so, you
03:06:41 20 reading from the report is not going to be
03:06:44 21 responsive to my question.

03:06:47 22 So I guess I'd just ask the
03:06:52 23 question again. Is a twist drill used to
03:06:54 24 create a cylindrical hole?

03:06:56 25 A. "Cognet discloses that the head of

03:07:04 1 the screw, first member, has a larger diameter
03:07:06 2 than the diameter of the tunnel, first bore,"
03:07:09 3 emphasis diameter of the tunnel, first bore,
03:07:11 4 "which makes it possible for the head to butt
03:07:13 5 up against the smaller diameter tunnel to stop
03:07:16 6 the progression of the screw to obtain
03:07:18 7 compression effect at the fracture site."

03:07:21 8 Q. Okay. I'll note for the record
03:07:23 9 that answer was not responsive to my question.
03:07:27 10 I will assume you were unable or unwilling to
03:07:30 11 answer my question, and I will move on, unless
03:07:36 12 you have anything further to add.

03:07:45 13 Mr. Dominguez, do you have
03:07:46 14 anything further to add?

03:07:47 15 A. No. That's all.

03:07:48 16 Q. Mr. Dominguez, just to confirm, I
03:08:04 17 note when we talked about your CV, in fact,
03:08:09 18 I'll show you the part I'm talking about here,
03:08:12 19 if you look on the screen, you'll see under
03:08:23 20 your Duraspine experience, you do say that you
03:08:28 21 have expertise in manufacturing, which is the
03:08:30 22 second line under Duraspine.

03:08:35 23 Do you see that?

03:08:35 24 A. Yes.

03:08:35 25 Q. All right. Let's turn to

03:08:42 1 Paragraph 76 of your report, which is on Page
 03:08:46 2 42.
 03:09:05 3 A. Okay.
 03:09:06 4 Q. So if you could just read that to
 03:09:10 5 yourself, and let me know when you've read it,
 03:09:13 6 please.
 03:09:14 7 A. You're saying Paragraph 76?
 03:09:16 8 Q. Yes, please. I will put it on the
 03:09:19 9 screen.
 03:09:52 10 A. Yes.
 03:09:52 11 Q. So starting at the third sentence,
 03:10:01 12 which is the third line down, do you see why it
 03:10:04 13 says, "Someone skilled in the art would."
 03:10:07 14 Do you see that sentence?
 03:10:08 15 A. Yes.
 03:10:09 16 Q. "Someone skilled in the art would
 03:10:11 17 have immediately understood that the screw
 03:10:14 18 head," and we're talking about Cognet, "would
 03:10:17 19 require a torque driving geometry (often used
 03:10:21 20 with the screwdriver tool) to drive the bone
 03:10:25 21 screw into bone by rotating screw. Almost all
 03:10:29 22 screws accomplish this with a torque
 03:10:31 23 transmitting aperture," and the sentence
 03:10:34 24 continues.
 03:10:36 25 Do you see that?

03:10:37 1 A. Yes, I do.

03:10:38 2 Q. Some screws have torque driving

03:10:39 3 geometries that are not torque transmitting

03:10:40 4 apertures, correct?

03:10:47 5 A. Yeah, there's a magnitude of

03:10:49 6 different bone screws with different designs

03:10:51 7 and shapes and with different heads, different

03:10:53 8 apertures, and so forth.

03:10:54 9 Q. What would be an example of a

03:10:59 10 torque driving geometry on a bone screw that is

03:11:03 11 not a torque transmitting aperture?

03:11:07 12 A. Can you repeat the question?

03:11:09 13 Q. Yeah. What would be an example of

03:11:11 14 a torque driving geometry on a bone screw that

03:11:14 15 is not a torque transmitting aperture?

03:11:17 16 A. Torque driving and torque

03:11:22 17 transmitting?

03:11:23 18 Q. What would be an example of torque

03:11:28 19 driving geometry that's not an aperture?

03:11:33 20 A. That's not an aperture?

03:11:35 21 Q. Yes.

03:11:37 22 A. I don't believe I've addressed

03:11:42 23 that in my declaration. I addressed in my

03:11:46 24 declaration internal apertures, internal torque

03:11:51 25 driving apertures, that are common to these

03:11:53 1 bone screws.

03:11:54 2 Q. Okay. Can you answer the

03:11:55 3 question, please?

03:11:56 4 A. Repeat the question, please?

03:12:04 5 Q. Yes. What would be an example of

03:12:06 6 a torque driving geometry on a bone screw

03:12:11 7 that's not an aperture?

03:12:12 8 A. As it relates to a medical bone

03:12:41 9 screw?

03:12:42 10 Q. Sure.

03:12:43 11 A. At this moment, I am not aware of

03:12:48 12 any that I could recall that would not have an

03:12:52 13 internal aperture if it's an internal -- if

03:12:55 14 it's an implantable bone screw.

03:12:58 15 Q. Could a medical bone screw have a

03:13:04 16 torque transmitting geometry that's not an

03:13:08 17 aperture?

03:13:08 18 A. As it relates to Cognet?

03:13:23 19 Q. As it relates -- no. To any bone

03:13:29 20 screw.

03:13:31 21 A. I'm not aware of any.

03:13:35 22 Q. Would a medical bone screw have a

03:13:41 23 torque transmitting geometry that's not an

03:13:43 24 aperture?

03:13:44 25 A. As I said, I'm not aware of any.

03:13:48 1 Q. But is it possible?

03:13:50 2 A. In the context of these devices,
03:14:13 3 these nails on fusion devices that we're
03:14:17 4 discussing for a small bone, it does not make
03:14:21 5 sense to a POSA to use anything but a
03:14:24 6 traditional bone screw with an internal
03:14:26 7 aperture torque transmission.

03:14:28 8 Q. What about like a hex head, why
03:14:31 9 couldn't you use a hex head?

03:14:33 10 A. Hex heads are primarily in cars
03:14:36 11 and mechanics and bolts that require tremendous
03:14:43 12 torques, which is something that you would see
03:14:46 13 in a bone screw implant.

03:14:51 14 Q. Could a medical bone screw have a
03:14:59 15 hex head?

03:15:03 16 MR. KAMHOLZ: Objection. Form.

03:15:04 17 A. I don't understand how it would be
03:15:13 18 used in a medical application.

03:15:14 19 Q. I said is it possible?

03:15:15 20 A. I have not seen one available in a
03:15:26 21 catalog, in a medical device catalog that I
03:15:29 22 could refer to to say that the bone screw has a
03:15:33 23 hex head on it.

03:15:34 24 Q. Is it possible, though?

03:15:35 25 A. What do you mean by "possible"?

03:15:37 1 Q. Could a medical device company
03:15:42 2 design a medical -- an implant assembly with a
03:15:48 3 bone screw that has a hex head?

03:15:53 4 A. I'm not aware of any, sir.

03:15:54 5 Q. I didn't ask if you were aware of
03:15:56 6 any. I said is it possible?

03:15:57 7 A. I don't believe a POSA would
03:16:14 8 specify a hex head screw or implantation.

03:16:24 9 Q. Why not?

03:16:26 10 A. Because most -- in this field,
03:16:31 11 everything needs to be, especially in the small
03:16:33 12 bones, everything needs to be as small as
03:16:35 13 possible, as low profile as possible, as
03:16:39 14 accessible percutaneously as possible,
03:16:42 15 requiring the smallest and thinnest
03:16:44 16 instruments, and an internal aperture on a bone
03:16:46 17 screw makes -- to a POSA makes the most logical
03:16:51 18 sense. They have been around for decades. And
03:16:55 19 that is the smallest optimal shape that you
03:16:59 20 could use on a bone screw that gives you the
03:17:02 21 minimal footprint on the head of a screw.

03:17:06 22 If you elect by whatever reason, I
03:17:10 23 don't know that a POSA would, but if you elect
03:17:11 24 to put on a large hexagonal head on a screw, it
03:17:18 25 would certainly go beyond the limits of the

03:17:19 1 implant, the size, the tools required to drive
03:17:25 2 that would be larger than just using a
03:17:30 3 slim-tipped aperture tool.

03:17:31 4 Q. But it could be done, correct?

03:17:34 5 A. In the application of Cognet, it
03:17:38 6 would not be what he is intending to do. He's
03:17:43 7 intending to have a low profile fastener
03:17:46 8 embedded in the nail or at the surface of the
03:17:48 9 nail, and having a hexagonal or polygonal head
03:17:55 10 on like a bolt on the top end of this would
03:18:00 11 cause it to reside above the surface of the
03:18:05 12 nail.

03:18:08 13 Q. Why couldn't it be sunk into the
03:18:10 14 countersink? Why couldn't a hexagonal head be
03:18:15 15 sunk into the countersink?

03:18:17 16 A. It would require more material.
03:18:18 17 It would require a socket or some tool, some
03:18:21 18 instrument tool, to drive that in there, and it
03:18:24 19 would require a larger hole in the implant.
03:18:28 20 These implants are very, very small. There's a
03:18:33 21 lot of material, and the larger you make the
03:18:37 22 tools, the more material you're removing from
03:18:39 23 the implant and making it weaker.

03:18:41 24 So to keep the optimal shape and
03:18:44 25 integrity of the implant, you want to use the

03:18:47 1 smallest possible screw heads.

03:18:50 2 Q. Let me come at it this way. If we

03:18:52 3 look back at Paragraph 76, the last sentence of

03:18:57 4 that paragraph begins with the word "Almost."

03:19:00 5 It says, "Almost all screws accomplish this

03:19:02 6 with a torque transmitting aperture."

03:19:05 7 Do you see that?

03:19:05 8 A. Yes.

03:19:06 9 Q. You did not say all screws

03:19:10 10 accomplish this with a torque transmitting

03:19:13 11 aperture, correct?

03:19:14 12 A. I said -- it states, "Almost all

03:19:18 13 screws accomplish this with a torque

03:19:20 14 transmitting aperture, so a POSA would assume

03:19:24 15 Cognet is disclosing this claim element."

03:19:26 16 Q. But you're acknowledging that some

03:19:28 17 screws don't accomplish this with a torque

03:19:28 18 transmitting aperture, correct?

03:19:52 19 A. I decided to use the word

03:19:54 20 "almost," because it's like to say "all," it

03:19:57 21 would be a blanket statement that everything in

03:20:00 22 the universe would fall into this particular

03:20:06 23 illustration.

03:20:07 24 So I'm saying that to a POSA, now,

03:20:12 25 it's prefaced by a POSA would recognize that

03:20:15 1 bone screws are used -- with an internal
 03:20:18 2 aperture are used to accomplish a torque
 03:20:21 3 transmitting feature on a bone screw.
 03:20:24 4 Q. Right. You can't say that
 03:20:34 5 everything in the universe would -- you can't
 03:20:39 6 say for certain that there are no screws that
 03:20:50 7 have a torque transmitting geometry which is
 03:20:54 8 not an aperture, correct? You don't know for
 03:20:58 9 sure that there isn't some bone screw out there
 03:21:02 10 that has some other geometry, correct, or do
 03:21:11 11 you?
 03:21:11 12 A. No. I mean, the bone screws that
 03:21:13 13 are out there in the field that are being used
 03:21:17 14 by surgeons today are going to be the bone
 03:21:20 15 screws that are described in Cognet, which is
 03:21:22 16 an or intended to be used in the form that
 03:21:25 17 Cognet intended to use the screw, which is an
 03:21:28 18 internal aperture.
 03:21:29 19 Q. But you can't sit here today and
 03:21:34 20 say for certain that there are no bone screws
 03:21:39 21 anywhere that have a torque transmitting
 03:21:48 22 geometry that's not an aperture? That was a
 03:21:51 23 double negative. Let me try to rephrase that
 03:21:53 24 question.
 03:21:53 25 You can't say definitively that

03:21:56 1 all bone screws that have a torque transmitting
03:22:01 2 geometry, that that geometry is an aperture,
03:22:06 3 correct?

03:22:06 4 A. For this application, to a POSA,
03:22:15 5 it makes the most common sense to use an
03:22:17 6 internal aperture.

03:22:18 7 Q. Not my question, though.

03:22:20 8 A. What's your question?

03:22:21 9 Q. I'm asking if you can say
03:22:23 10 definitively that all bone screws that have a
03:22:26 11 torque transmitting geometry, that geometry is
03:22:29 12 an aperture?

03:22:31 13 A. There may be a geometry out there
03:22:39 14 that will transmit torque.

03:22:44 15 Q. And that's not an aperture,
03:22:46 16 correct?

03:22:46 17 A. That may not be an aperture.

03:22:48 18 Q. Okay.

03:23:00 19 MR. KAMHOLZ: Before you move on,
03:23:02 20 may we take a short break?

03:23:03 21 MR. LINDENBAUM: Yeah, sure. Say
03:23:07 22 like ten minutes?

03:23:08 23 MR. KAMHOLZ: Fine for me.

03:23:10 24 MR. LINDENBAUM: See you back in
03:23:11 25 ten.

03:23:12 1 (Recess taken at 3:23 p.m. and
03:23:15 2 reconvening at 3:34 p.m.)
03:34:31 3 BY MR. LINDENBAUM:
03:34:31 4 Q. Mr. Dominguez, I'd like to turn
03:34:33 5 back to your declaration, this time Paragraph
03:34:38 6 78, which is on Page 43. I will put it on the
03:34:43 7 screen so we're all on the same page,
03:34:49 8 literally. This concerns Claim 5.
03:35:02 9 You should have on your screen
03:35:10 10 part of Page 43 of your declaration, including
03:35:13 11 Paragraph 77 and 78.
03:35:16 12 Do you see that?
03:35:17 13 A. Yes.
03:35:18 14 Q. All right. So I'd like you to
03:35:20 15 read Paragraph 78 to yourself, and let me know
03:35:24 16 when you're finished.
03:35:43 17 A. Yes.
03:35:43 18 Q. First sentence of Paragraph 78
03:35:48 19 says, "Since the screw head is intended to
03:35:51 20 partially reside inside the aperture of the
03:35:54 21 third member (Claim 2) it is common in design
03:35:58 22 to create the aperture cavity using a drill
03:36:01 23 turned on this same axis (aligned) as the bored
03:36:08 24 through-hole."
03:36:09 25 My question is, what is an

03:36:11 1 aperture cavity?

03:36:12 2 A. I use that term with counterbore.

03:36:22 3 Q. Okay. So you're using that term

03:36:25 4 "aperture cavity" to mean counterbore?

03:36:30 5 A. So in Cognet's patent diagram" of

03:36:33 6 a key above, a countersink recess or a

03:36:36 7 counterbore recess "is shown that captures a

03:36:40 8 screw head to best sink the screw head

03:36:40 9 prominence inside the terminal end of the third

03:36:43 10 member. "

03:36:43 11 Q. So where in that figure is the

03:36:59 12 aperture cavity?

03:37:10 13 A. "Cognet creates a 'countersink or

03:37:12 14 shoulder' cavity recess inside at the entrance

03:37:15 15 to a bore hole, which is a preferred manner to

03:37:18 16 prevent a screw from entering past the

03:37:22 17 preferred penetration depth of the screw. "

03:37:25 18 Q. Are you reading from Paragraph 74

03:37:27 19 of your declaration?

03:37:28 20 A. Yes.

03:37:29 21 Q. I'm trying to get a sense of this

03:37:31 22 figure that's on Page 43 of your declaration.

03:37:34 23 Is the head of the screw in that figure

03:37:39 24 residing in the aperture cavity?

03:37:42 25 A. The cavity aperture created on the

03:37:52 1 first bore axis will ensure the screw head
03:37:56 2 enters on the same path to the desired depth
03:37:58 3 until the screw abutment is reached as
03:38:01 4 described in Claim 3.

03:38:01 5 Q. That is not responsive to my
03:38:04 6 question. My question is, in the figure,
03:38:07 7 annotated figure shown on Page 43 of your
03:38:11 8 declaration, is the screw head in the aperture
03:38:13 9 cavity?

03:38:13 10 A. "The cavity aperture created on
03:38:22 11 the first bore axis will ensure the screw head
03:38:25 12 enters on the same path to the desired depth
03:38:28 13 until screw abutment is reached as described in
03:38:30 14 Claim 3."

03:38:30 15 Q. Okay. So are you agreeing that in
03:38:40 16 the figure on Page 43 the screw head is in the
03:38:44 17 aperture cavity?

03:38:48 18 A. In Cognet's patent diagram above,
03:39:24 19 on top of Page 40, "a countersink recess is
03:39:28 20 shown that captures the screw head to best sink
03:39:31 21 the screw head prominence inside the terminal
03:39:33 22 end of the third member."

03:39:35 23 Q. So again, are you agreeing that in
03:39:44 24 the figure on Page 43 or at the top of Page 40
03:39:49 25 the screw head is in the aperture cavity?

03:39:52 1 A. "A POSA knows to 'seat' the
03:39:57 2 terminal end of the screw flush or below the
03:39:59 3 surface of bone to create a 'low-profile'
03:40:02 4 construct to prevent irritating tissues and
03:40:05 5 avoiding being felt in areas where there is
03:40:10 6 minimal bone-to-skin thickness. In Cognet's
03:40:26 7 patent diagram above, a countersink recess is
03:40:29 8 shown that captures the screw head to best sink
03:40:32 9 the screw head prominence inside the terminal
03:40:35 10 end of the third body. "

03:40:36 11 Q. Okay. I don't believe that answer
03:40:40 12 is responsive to my question, so I'm going to
03:40:49 13 assume you are either unable to answer this
03:40:53 14 yes/no question.

03:40:55 15 So if we continue on Paragraph 78,
03:40:58 16 the second sentence refers to the "cavity
03:41:02 17 aperture. "

03:41:03 18 Do you see that?

03:41:03 19 A. Yes.

03:41:03 20 Q. Is the cavity aperture the same as
03:41:06 21 the aperture cavity mentioned in the prior
03:41:10 22 sentence?

03:41:11 23 A. Yeah, these two sentences describe
03:41:55 24 the same cavity aperture.

03:41:56 25 Q. So the answer is, yes, the cavity

03:42:00 1 aperture mentioned in the second sentence is
03:42:03 2 the same as the aperture cavity mentioned in
03:42:05 3 the first sentence, correct?

03:42:07 4 A. The word you just juxtaposed,
03:42:12 5 cavity aperture or aperture cavity, it's all in
03:42:14 6 the same context.

03:42:15 7 Q. And here it means the same thing,
03:42:17 8 correct?

03:42:17 9 A. It's in the same context, yes.

03:42:19 10 Q. Is there a distinction between the
03:42:23 11 aperture cavity and the cavity aperture?

03:42:25 12 A. Not in my -- not -- as addressing
03:42:29 13 this declaration, in my mind there was none.

03:42:32 14 Q. Okay. It says in the first
03:42:35 15 sentence -- well, where can I see the aperture
03:42:42 16 cavity -- where is the aperture cavity located
03:42:45 17 in that figure above Paragraph 78?

03:42:49 18 A. "Cognet creates a 'countersink or
03:42:54 19 shoulder' cavity recess inside the entrance to
03:42:56 20 a bore hole."

03:42:59 21 Q. Let me see if I can find a good
03:43:34 22 example here. Hold on a second. Sorry for the
03:43:42 23 scrolling.

03:43:43 24 If we look at the top of Page 40,
03:44:06 25 which is on your screen now, let me see if I

03:44:10 1 can Zoom in here -- no, I cannot.

03:44:13 2 So you identify here in blue

03:44:16 3 shading the head of the first member, correct?

03:44:22 4 This is the annotated figure at the top of Page

03:44:24 5 40 of your declaration.

03:44:25 6 A. Yes, I see that head of first

03:44:29 7 member pointing to the blue.

03:44:33 8 Q. Is that blue head in the cavity

03:44:35 9 aperture in that figure?

03:44:43 10 A. "In Cognet's patent diagram" that

03:44:54 11 you're showing "above, a countersink recess is

03:44:57 12 shown that captures the screw head to best sink

03:44:59 13 the screw head prominence inside the terminal

03:45:03 14 and of the third member."

03:45:04 15 Q. Do you agree that the blue shaded

03:45:07 16 head in that figure is in the cavity aperture?

03:45:11 17 A. "In Cognet's patent diagram above,

03:45:19 18 the countersink recess is shown that captures

03:45:21 19 the screw head to best sink the screw head

03:45:23 20 prominence inside the terminal end of the third

03:45:25 21 member."

03:45:26 22 Q. That is not responsive to my

03:45:28 23 question. I'm going to move on. I'm going to

03:45:32 24 assume that you agreed with my statement,

03:45:33 25 though, given what you just read, and try to

03:45:37 1 move from there.

03:45:38 2 So if we turn to Paragraph 78.

03:45:47 3 I'm looking at the first sentence. Do you see

03:45:49 4 the first sentence of Paragraph 78?

03:45:51 5 A. Yes.

03:45:51 6 Q. Okay. So it says, "Since the

03:45:56 7 screw head is intended to partially reside

03:45:59 8 inside the aperture of the third member (Claim

03:46:03 9 2) it is common in design to create the

03:46:06 10 aperture cavity using a drill turned on the

03:46:10 11 same axis (aligned) as the bored through-hole."

03:46:15 12 So does that indicate to you that

03:46:17 13 the aperture cavity is created after the bored

03:46:25 14 through-hole is created?

03:46:31 15 A. I don't recall addressing that in

03:46:33 16 my declaration.

03:46:33 17 Q. I'm asking what the sentence that

03:46:35 18 you wrote here in your declaration means?

03:46:37 19 These are your words in your declaration. This

03:46:39 20 is your expert opinion. And you state here

03:46:42 21 that "it is common in design to create the

03:46:45 22 aperture cavity using a drill turned on the

03:46:48 23 same axis (aligned) as the bored through-hole."

03:46:53 24 So my question is, does that

03:46:55 25 indicate that the aperture cavity is created

03:46:57 1 after the board through-hole is created?

03:47:05 2 A. "Cognet creates a 'countersink or
03:47:30 3 shoulder' cavity recess inside at the entrance
03:47:33 4 to a bore hole, which is a preferred manner to
03:47:36 5 prevent the screw from entering past the
03:47:37 6 preferred penetration depth of the screw."

03:47:40 7 Q. That answer is not responsive to
03:47:42 8 my question. I'm going to assume you are
03:47:44 9 unwilling or unable to answer my question, and
03:47:47 10 I will move on, unless you have anything
03:47:56 11 further to add, Mr. Dominguez?

03:47:57 12 A. Nothing further.

03:47:59 13 Q. Thank you. You address in Claim 9
03:48:07 14 in Paragraph 81 to 82 of your report, which is
03:48:11 15 on Pages 44 to 45. So right here, 81 and 82 --
03:48:24 16 I'm going to unshare for a second and try to
03:48:29 17 redo this.

03:48:30 18 If you have a copy of Exhibit
03:48:34 19 1002, could you turn to Page 44 to 45, and I
03:48:37 20 will try to get it reopened. If you can turn
03:48:44 21 to Paragraph 81 and 82, if you could review
03:48:48 22 them, and let me know when you've finished
03:48:51 23 reviewing them.

03:49:16 24 A. I'm on Page 44, reading 81.

03:49:20 25 Q. All right. Let me know when

03:49:26 1 you're finished reading those paragraphs.

03:49:28 2 A. 81 and 82?

03:50:02 3 Q. Yes, please.

03:50:03 4 A. I've read them both.

03:50:04 5 Q. Great. You state in the third

03:50:08 6 sentence, which is three lines down, that "Two

03:50:13 7 non-parallel lines will intersect at a point in

03:50:16 8 space provided they are" -- I think the word

03:50:20 9 "in" is missing -- in "the same plane."

03:50:22 10 Do you see that?

03:50:22 11 A. "Two non-parallel lines will

03:50:28 12 intersect at a point in space provided they are

03:50:33 13 the same plane."

03:50:35 14 Q. They are in the same plane or they

03:50:37 15 are the same plane?

03:50:39 16 A. The word I should have probably

03:50:41 17 inserted there is they are on the same plane.

03:50:43 18 Q. Okay. Fine. And then in

03:50:48 19 Paragraph 82, you say, and there's a figure on

03:50:52 20 the next page, you say, "Cognet discloses the

03:50:55 21 first bore axis and the second bore axis

03:50:59 22 intersecting outside the third member as shown

03:51:02 23 below."

03:51:03 24 Do you see that?

03:51:04 25 A. Yes, I do.

03:51:07 1 Q. Are you assuming that the first
03:51:09 2 bore axis and the second bore axis are on the
03:51:14 3 same plane?

03:51:15 4 A. Yes. There is a -- yes, I am
03:51:18 5 assuming -- well, more than assuming. There is
03:51:26 6 a figure in Cognet that shows the holes being
03:51:30 7 on the same plane.

03:51:31 8 Q. Is it possible that the axes are
03:51:34 9 off by about one degree; is that possible to be
03:51:40 10 depicted in this figure?

03:51:41 11 A. I believe Cognet describes the
03:51:51 12 distal hole as being perpendicular. Let me
03:51:58 13 find that for you.

03:51:59 14 Q. Sure.

03:52:26 15 A. Exhibit 1004, Cognet's patent, the
03:52:30 16 bottom of Page 2, the last sentence, "This nail
03:52:40 17 also has at least one orifice or one tunnel
03:52:43 18 situated at the distal part of the nail,
03:52:46 19 running perpendicular to the axis thereof, and
03:52:49 20 intended to accept a screw that allows the nail
03:52:52 21 to be anchored into the bone, preventing it
03:52:54 22 from mobilizing toward the proximal part of the
03:53:05 23 olecranon and preventing the proximal site from
03:53:08 24 twisting."

03:53:10 25 Q. So the tunnel at the distal part

03:53:33 1 of the nail, right, that's where -- that's
03:53:39 2 essentially element three, right, the second
03:53:44 3 bore axis?

03:53:46 4 A. Yes.

03:53:47 5 Q. That could be, it says, it's also
03:53:50 6 "running perpendicular to the axis thereof."
03:53:53 7 So what is it running perpendicular to?

03:53:55 8 A. The axis of the nail.

03:53:58 9 Q. Right. So it could be
03:54:02 10 perpendicular to the axis -- the axis of the
03:54:05 11 nail runs which way; vertically in this
03:54:07 12 picture, correct?

03:54:08 13 A. Correct.

03:54:08 14 Q. Okay. It could run perpendicular
03:54:11 15 to that axis and be pointing in any direction
03:54:15 16 as long as it rotates, you know, around the
03:54:20 17 vertical axis, correct?

03:54:21 18 A. In my opinion, that's not how
03:54:42 19 Cognet intends for the position of these screws
03:54:49 20 to be as you described. He intended the
03:54:51 21 position of these screws for the distal screw
03:54:54 22 to be perpendicular to the axis of the rod or
03:54:57 23 the axis of the nail and for the upper screw,
03:55:02 24 the lag screw, to be also on the same plane as
03:55:07 25 the nail.

03:55:09 1 Q. Okay. And what are you basing
03:55:11 2 that on?

03:55:12 3 A. You can look at Figure 2 in
03:55:15 4 Cognet's patent.

03:55:17 5 Q. Okay.

03:55:19 6 A. You will see two holes, a hole
03:55:24 7 point towards No. 2 and a hole point towards
03:55:27 8 No. 3. Those holes follow an axial line along
03:55:32 9 the axis of the nail.

03:55:33 10 Q. Can you tell in which direction
03:55:36 11 those bores, those tunnels, are directed from
03:55:40 12 that figure?

03:55:40 13 A. Yes. That is a side view of
03:55:43 14 Figure 1, looking at it from the side.

03:55:49 15 Q. Mm-hmm, yes.

03:55:50 16 A. So you can see that the circular
03:55:53 17 holes that Cognet describes there as two and
03:55:56 18 three are on center and in line with the axis
03:56:00 19 of the nail.

03:56:02 20 Q. Doesn't it look to you that hole
03:56:04 21 three is a little to the left of center?

03:56:08 22 A. Not to me. Let me see if he
03:56:13 23 further -- no, I think they're in line. In my
03:56:16 24 opinion, looking at this figure, a POSA would
03:56:18 25 assume that they're all in line. It's all on

03:56:21 1 one plane.

03:56:21 2 Q. If hole three was a little to

03:56:23 3 the left of center, would that indicate that

03:56:26 4 they're not on the same plane?

03:56:27 5 A. They're concentric holes. They're

03:56:32 6 not on the same plane. But this looks like the

03:56:37 7 holes are on the same plane. They're on the

03:56:39 8 axis of the nail.

03:56:40 9 Q. Okay. But if hole three was a

03:56:43 10 little to the left of center and hole two is on

03:56:45 11 center, that would indicate that they're not on

03:56:48 12 the same plane, correct?

03:56:48 13 A. I can't speculate that way.

03:56:52 14 Q. Why can't you answer that

03:57:03 15 question?

03:57:03 16 A. I can't make that speculation,

03:57:05 17 because to me the figures look like they're

03:57:08 18 online, on axis with the nail.

03:57:10 19 Q. Oh, I see. It's not that you

03:57:12 20 can't speculate, you won't speculate; is that

03:57:13 21 right?

03:57:13 22 A. It's outside what I recall

03:57:16 23 addressing in my declaration.

03:57:17 24 Q. Well, you address in your

03:57:19 25 declaration -- it seems like you've assumed in

03:57:22 1 your declaration that the first bore axis and
03:57:27 2 the second bore axis are on the same plane, and
03:57:29 3 I asked you just now why you think that, and
03:57:32 4 you've directed me to Figure 2, which I don't
03:57:35 5 think you cited in your declaration. But
03:57:37 6 following along with that path of reasoning,
03:57:41 7 I'm trying to understand why you believe that.

03:57:44 8 So I'm asking if we're both
03:57:47 9 understanding Figure 2 the same way. My
03:57:49 10 understanding is that if hole three is a little
03:57:53 11 to the left of center and hole two is on center
03:57:56 12 of that nail in that Figure 2, they would not
03:57:57 13 be in the same plane, and I'm asking you if you
03:58:00 14 agree with that?

03:58:01 15 A. A POSA would not design a hole to
03:58:08 16 be off center, because you are weakening the
03:58:19 17 nail by doing so, because you're shifting the
03:58:22 18 hole over towards one side of the nail, which
03:58:26 19 means that the one side will have a very thin
03:58:28 20 thickness of material, and the other side will
03:58:30 21 have a much larger thickness of material.

03:58:33 22 So one side would be you're
03:58:35 23 compromising the integrity of the nail by
03:58:38 24 shifting the hole to be off center.

03:58:39 25 Q. I understand what your point is.

03:58:42 1 My assumption is that if hole three is a little
03:58:44 2 to the left, that it won't go straight through
03:58:47 3 the page here, it will be actually still
03:58:49 4 perpendicular to the line of the nail, and
03:58:51 5 therefore, it will be angled -- the bore
03:58:54 6 actually will be angled off to the right
03:58:56 7 because it's starting on the left.

03:58:59 8 Do you understand what I'm saying?

03:59:01 9 A. That's not how I understand
03:59:04 10 Cognet.

03:59:04 11 Q. But my question is, if hole three
03:59:09 12 is a little to the left, and hole three is
03:59:16 13 perpendicular to the vertical axis of the nail,
03:59:18 14 and therefore, it would be run a little to the
03:59:20 15 right, that would mean that hole three and hole
03:59:22 16 two are not on the same plane, correct?

03:59:36 17 And that's assuming that hole two
03:59:38 18 is in the center and run straight through the
03:59:40 19 page. Then by definition, the two holes would
03:59:45 20 not be on the same plane, correct?

03:59:48 21 MR. KAMHOLZ: Objection. Form.

03:59:49 22 A. Give me a moment to look something
04:00:03 23 up.

04:00:03 24 Q. Sure. Can you tell me where
04:00:06 25 you're looking?

04:00:07 1 A. I'm looking at Cognet's patent.

04:00:09 2 Q. Okay.

04:01:34 3 A. Within Cognet, Page 3, the very
04:01:41 4 bottom of Page 3, starting around Line 32,
04:01:47 5 Cognet is describing the various aspects of a
04:01:50 6 nail, so I'm going to start by stating what he
04:01:53 7 stated. "If the nail is solid and comprises at
04:01:56 8 least two tunnels, one tunnel starting at the
04:01:59 9 top of the nail and leading in a direction that
04:02:01 10 is oblique relative to the axis of the nail,
04:02:06 11 and at least one tunnel situated in the distal
04:02:08 12 part of the nail and perpendicular to the axis
04:02:12 13 thereof."

04:02:15 14 So he is describing two tunnels,
04:02:19 15 one tunnel at the top, one tunnel at the
04:02:21 16 bottom. They are on axis with the nail.

04:02:30 17 Q. Okay.

04:02:31 18 A. So that would make the figure that
04:02:33 19 I have in my declaration showing an
04:02:36 20 intersection between those two bores, the top
04:02:40 21 bore and the bottom bore, intersect because
04:02:43 22 they are on the same axis.

04:02:45 23 Q. Do you mean on the same planes?

04:02:47 24 A. On the same planes and -- yes, on
04:02:51 25 the same planes, pardon. On the same plane.

04:02:54 1 Q. Why does what you just read
04:02:56 2 indicate that they're on the same plane? What
04:02:58 3 part of that indicates that they're on the same
04:03:00 4 plane?

04:03:00 5 A. The first, the top upper bore, he
04:03:10 6 describes it as being, on his words, "it is an
04:03:15 7 oblique bore relative to the axis of the nail."
04:03:20 8 So he is drilling an oblique bore that's
04:03:23 9 relative to the axis of the nail, and at least
04:03:31 10 one tunnel situated in the distal part of the
04:03:33 11 nail and perpendicular to the axis thereof.

04:03:36 12 So perpendicular to the axis of
04:03:38 13 the nail and oblique relative to the axis of
04:03:46 14 the nail to me describes that they are both on
04:03:48 15 a same plane.

04:03:50 16 Q. Couldn't the distal hole, No. 3,
04:03:58 17 the second bore axis, be perpendicular to the
04:04:01 18 axis of the nail, and yet, pointed in any
04:04:05 19 direction on the horizontal plane?

04:04:10 20 A. The distal part of the nail and
04:04:18 21 perpendicular to the axis thereof. So to me
04:04:20 22 the distal hole is perpendicular to the axis of
04:04:24 23 the nail, not parallel to the axis of the nail,
04:04:26 24 but perpendicular to it. So it's on the axis
04:04:29 25 of the nail.

04:04:29 1 Q. Sure. If the second bore axis,
04:04:34 2 instead of running side to side in the picture
04:04:36 3 on Page 45 of your report, if the distal nail
04:04:43 4 was pointed straight at us, couldn't it still
04:04:45 5 be perpendicular to the axis of the nail?

04:04:48 6 A. That's not representative of what
04:04:55 7 Cognet is showing.

04:04:57 8 Q. That's not my question. That's
04:04:58 9 not my question. Can you answer that question?
04:05:02 10 It's a geometry question. Aren't I correct?

04:05:06 11 A. Can you repeat the question?

04:05:09 12 Q. Sure. If the second bore axis,
04:05:12 13 which you show in green on Page 45 of your
04:05:16 14 report, if instead of running side to side in
04:05:23 15 the picture on Page 45 of your report, if the
04:05:25 16 distal nail is pointed straight at us, couldn't
04:05:28 17 it still be perpendicular to the axis of the
04:05:31 18 nail?

04:05:31 19 A. Again, all I can do is refer to
04:05:56 20 Cognet, where he's describing in his patent
04:06:01 21 that one tunnel starting from the top of the
04:06:03 22 nail and leading in a direction that is oblique
04:06:06 23 relative to the axis of the nail, and at least
04:06:09 24 one tunnel situated in the distal part of the
04:06:11 25 nail and perpendicular to the axis thereof,

04:06:15 1 that to me describes two bores that are on the
04:06:19 2 same plane following the -- they intersect the
04:06:25 3 axis of the nail, and they are positioned
04:06:27 4 parallel to one another, so there is an
04:06:30 5 intersection point.

04:06:31 6 Q. Sorry, did you finish your answer?

04:06:34 7 A. Yes.

04:06:34 8 Q. That answer is not responsive to
04:06:38 9 my question. Are you able to answer my
04:06:42 10 question as asked? I'm happy to repeat it.

04:06:45 11 A. I do not recall addressing your
04:06:48 12 question in my declaration. It does not
04:06:53 13 constitute any of the figures in Cognet.

04:06:55 14 Q. It goes to your opinion about the
04:06:59 15 two axes being in the same -- on the same
04:07:02 16 plane. It directly relates to your opinion in
04:07:07 17 your report. Granted, you did not answer this
04:07:09 18 hypothetical, but it goes to your opinion.

04:07:11 19 So my question is, can you or can
04:07:13 20 you not answer this question?

04:07:14 21 A. I don't recall addressing this
04:07:23 22 question in my declaration.

04:07:24 23 Q. You didn't. But it relates to
04:07:27 24 your opinion. So my question is, can you or
04:07:29 25 can you not answer that question?

04:07:30 1 A. As it relates to Cognet, your
04:07:36 2 question is not relevant to Cognet's diagram.

04:07:40 3 Q. No, it's a hypothetical. Can you
04:07:43 4 or can you not answer a hypothetical?

04:07:47 5 A. As I said, I do not recall
04:07:54 6 addressing this in my declaration.

04:07:55 7 Q. I don't disagree with you. I'm
04:07:57 8 asking you a hypothetical question that is not
04:08:00 9 explicitly mentioned in your report.

04:08:02 10 Are you willing to answer a
04:08:04 11 hypothetical question that is not explicitly
04:08:06 12 stated in your report? Excuse me, not
04:08:19 13 explicitly answered in your report.

04:08:20 14 A. Since I didn't address it in my
04:08:29 15 report, in my declaration, I'd prefer not to
04:08:38 16 further elaborate on your hypothetical
04:08:40 17 question.

04:08:40 18 Q. Okay. So in general, you are not
04:08:44 19 willing to elaborate on any hypothetical
04:08:47 20 questions that are not explicitly answered in
04:08:49 21 your report; is that right?

04:08:52 22 MR. KAMHOLZ: Objection.

04:08:53 23 Foundation.

04:08:53 24 A. I did in my report describe in
04:09:02 25 this claim that these two conditions, these two

04:09:05 1 geometric conditions here described in this
04:09:08 2 figure, do provide an intersection which meets
04:09:11 3 that claim element.

04:09:12 4 Q. That also does not answer the
04:09:17 5 question that was asked. The question is,
04:09:20 6 during the deposition today, are you willing to
04:09:22 7 elaborate on any hypothetical questions that
04:09:25 8 are not explicitly answered in your report?

04:09:27 9 A. That would depend on the
04:09:36 10 hypothetical question.

04:09:37 11 Q. Okay. And this hypothetical
04:09:39 12 question that I've asked you about the second
04:09:42 13 bore axis here you're not willing to answer; is
04:09:45 14 that right?

04:09:45 15 A. Cognet discloses in his patent
04:09:48 16 explicitly how this geometry works.

04:09:51 17 Q. And I'm asking you a hypothetical,
04:09:53 18 and you're telling me -- it seems like you're
04:09:55 19 not -- I just want to confirm, you know, we
04:10:00 20 don't need to belabor the point. I understand
04:10:03 21 you're not willing to answer my hypothetical
04:10:05 22 question. So my question to you is, am I
04:10:08 23 correct?

04:10:08 24 A. Like I said before, I don't recall
04:10:09 25 addressing that in my declaration, and I cannot

04:10:12 1 answer your hypothetical question.

04:10:13 2 Q. You cannot or you will not?

04:10:14 3 A. In my declaration, I studied

04:10:28 4 Cognet and Cognet's diagrams and his claims,

04:10:32 5 and that is what I'm using in my declaration to

04:10:35 6 state that this claim is being met, because all

04:10:38 7 the geometries are as Cognet describes.

04:10:46 8 Q. Okay. I'll take that to mean

04:10:47 9 you're not willing to answer the hypothetical

04:10:49 10 question, as you've already stated, so I'm just

04:10:51 11 going to assume you either cannot or will not

04:10:53 12 answer it, and I'll move on. That's fine.

04:10:55 13 Okay.

04:10:56 14 So if we turn to -- let's turn to

04:11:25 15 -- I want you to turn to Paragraph 101 of your

04:11:29 16 report, which is on Page 50.

04:11:42 17 A. I'm there.

04:11:42 18 Q. Okay. Could you read the first

04:11:47 19 two sentences or you can read the entire

04:11:50 20 paragraph if you'd like, but let me know when

04:11:55 21 you've finished reviewing Paragraph 101.

04:11:59 22 A. Okay.

04:12:23 23 Q. Have you identified any benefit --

04:12:26 24 let me rephrase. Does your declaration

04:12:28 25 identify any benefit to using the screws in

04:12:31 1 Brumfield with the nail in Cognet?

04:12:33 2 A. "It would have been obvious to a
04:13:07 3 POSA to use the screws disclosed in Brumfield
04:13:10 4 with the intramedullary nail disclosed in
04:13:12 5 Cognet because the screws and nail in Brumfield
04:13:15 6 are performing the same function in the same
04:13:17 7 way as the screw and nail in Cognet."

04:13:21 8 Q. That didn't answer my question.
04:13:24 9 The answer was not responsive. My question
04:13:26 10 was, have you identified any benefit to using
04:13:29 11 the screws in Brumfield with the nail in
04:13:31 12 Cognet?

04:13:31 13 A. The benefit is that they're namely
04:13:39 14 proximal screws in Brumfield and Cognet is
04:13:42 15 providing compression from the intramedullary
04:13:44 16 nail to the fractured bone. So the benefit is
04:13:47 17 compression, and --

04:13:50 18 Q. Where is that? What's the benefit
04:14:00 19 to using the nail -- I'm sorry, the screw in
04:14:03 20 Brumfield as opposed to the screw in Cognet?
04:14:11 21 Do you know why a person of skill in the art
04:14:13 22 would even think to use the screw in Brumfield
04:14:15 23 as opposed to the screw in Cognet?

04:14:18 24 A. "It would have been obvious to a
04:14:25 25 POSA to use the screws ... in Brumfield with

04:14:28 1 the intramedullary nail disclosed in Cognet
04:14:29 2 because the screw and nail in Brumfield are
04:14:31 3 performing the same function in the same way as
04:14:33 4 the screw and nail in Cognet, namely that the
04:14:38 5 proximal screws in Brumfield and Cognet ... is
04:14:41 6 providing compression from the intramedullary
04:14:43 7 nail to the fractured bone."

04:14:46 8 Q. Okay. That doesn't answer my
04:14:47 9 question. That answer was not responsive.
04:14:52 10 I'll just move on.

04:14:58 11 Does your declaration contain any
04:15:01 12 analysis of whether the screw disclosed in
04:15:04 13 Brumfield could successfully work with the nail
04:15:06 14 disclosed in Cognet?

04:15:07 15 A. There is Figure 6 and 7, which is
04:15:23 16 a side view and an end view of the Brumfield
04:15:29 17 screw.

04:15:29 18 Q. Are you looking at Brumfield now?

04:15:32 19 A. I'm sorry, I thought we were
04:15:33 20 talking Brumfield?

04:15:35 21 Q. We are. You said Figure 6 and 7.
04:15:39 22 I didn't know where you were looking.

04:15:41 23 A. Look at the top of Page 51, the
04:15:43 24 top figure on Page 51. That's a figure out of
04:15:49 25 —

04:15:49 1 Q. Got it. I understand now. Thank
04:15:51 2 you. So you were saying?

04:15:53 3 A. The elements that Brumfield
04:15:55 4 describes in his screw are elements that Cognet
04:16:05 5 would use as a bone screw for his device, for
04:16:09 6 his intramedullary nail.

04:16:11 7 Q. Okay. Your declaration doesn't
04:16:17 8 contain any analysis of whether the screw
04:16:22 9 disclosed in Brumfield could successfully work
04:16:25 10 with the nail disclosed in Cognet, correct?

04:16:27 11 A. "It would have been obvious to a
04:16:43 12 POSA to use the screws disclosed in Brumfield
04:16:45 13 with the intramedullary nail disclosed in
04:16:48 14 Cognet because the screw and nail in Brumfield
04:16:52 15 are performing the same function in the same
04:16:54 16 way as the screw and nail in Cognet. Namely,
04:16:57 17 the proximal screw in Brumfield and Cognet is
04:17:00 18 providing compression from the intramedullary
04:17:03 19 nail to the fractured bone. The first
04:17:06 20 (proximal) screw has threads towards the end of
04:17:09 21 the screw that enters, captures and helps
04:17:11 22 reduce the bone fragment and applies
04:17:13 23 compressive forces. The portion of the screw
04:17:16 24 shank within the nail or not in the fractured
04:17:20 25 part of the bone is a smooth shank so that it

04:17:25 1 spins smoothly about unfractured bone without
04:17:31 2 imparting compression loading on it, since
04:17:35 3 compression to reduce the fracture is preferred
04:17:38 4 on the fractured bone side."

04:17:38 5 So in Cognet, he discloses a bone
04:17:41 6 screw having the thread, partial thread, and
04:17:44 7 then having a neck or shank portion that is
04:17:48 8 unthreaded as the portion describing the shaft
04:17:51 9 of the screw. He also describes a screw head
04:17:56 10 that is going to fit inside the bore.

04:17:59 11 So Cognet goes on to disclose that
04:18:09 12 a screw that is inserted into through the nail
04:18:16 13 and into bone. So a POSA would assume that
04:18:19 14 Cognet is also disclosing an aperture in the
04:18:22 15 head of the screw that it is not explicitly
04:18:26 16 stated in Cognet's patent.

04:18:31 17 Brumfield discloses a hexagonal
04:18:35 18 shaped insert for its aperture in the head
04:18:36 19 portion of the screw and permits insertion of a
04:18:39 20 suitable tool form compression of the screw.

04:18:41 21 So my analysis is that the screw
04:18:43 22 that Brumfield has patented contains all the
04:18:48 23 functions and features and aspects of a screw
04:18:51 24 that Cognet could use in his nail.

04:18:55 25 Q. Where is all of that in your

04:18:57 1 declaration?

04:18:59 2 A. It's on Page 51, Page 50 and 51.

04:19:05 3 Q. All of that is in this paragraph
04:19:08 4 right here, Paragraph 101, all of that fits
04:19:11 5 into that paragraph?

04:19:12 6 A. 101 and leading into Paragraph
04:19:16 7 102.

04:19:16 8 Q. If we turn back to Paragraph 75 of
04:19:43 9 your report, which is on Page 41, you've read
04:19:46 10 this line a number of times today during the
04:19:48 11 deposition. It's on the screen here. You'll
04:19:53 12 see that Paragraph 75 says, starting -- well,
04:19:57 13 it says, "Figure 1 of Cognet shows the exterior
04:20:00 14 surface of the head portion of the first member
04:20:03 15 abutting the interior surface of the first bore
04:20:06 16 at the first aperture. Cognet further
04:20:10 17 discloses that the head of the screw (first
04:20:12 18 member) has a larger diameter than the diameter
04:20:15 19 of the tunnel which makes it possible for the
04:20:18 20 head to butt up against the smaller diameter
04:20:21 21 tunnel to stop the progression of the screw and
04:20:25 22 obtain a compression effect at the fracture
04:20:28 23 site."

04:20:29 24 Do you see that?

04:20:30 25 A. Yes.

04:20:30 1 Q. Does Brumfield disclose that?

04:21:52 2 A. On the figure on Page 51,
04:21:54 3 Brumfield's figure for his bone screw, there is
04:22:00 4 a head section listed.

04:22:02 5 Q. That's not my question.

04:22:13 6 A. Let me finish my thought.

04:22:15 7 Q. Please, I didn't mean to cut you
04:22:16 8 off. Please finish.

04:22:17 9 A. The head section is larger in
04:22:21 10 size, you can see, from the side view than the
04:22:25 11 shaft or the thread section of the bone screw.
04:22:28 12 So that head section is going to create along
04:22:34 13 its path an interference with the hole that the
04:22:37 14 shaft is going into.

04:22:39 15 Q. In Brumfield?

04:22:40 16 A. I mean, this figure is from
04:22:57 17 Brumfield. So what I'm saying is that Cognet
04:22:59 18 could use this screw in Brumfield to perform
04:23:02 19 the function that he's trying to achieve with
04:23:06 20 his nail.

04:23:06 21 Q. That's not my question. I'm going
04:23:08 22 to put Exhibit 1006 into the chat.

04:23:30 23 (Document marked as Exhibit 1006
04:23:33 24 for identification)

04:23:33 25 Q. My understanding is Brumfield does

04:23:34 1 not perform the same function in the same way
 04:23:36 2 as the disclosure you have of Cognet in
 04:23:41 3 Paragraph 75.

04:23:42 4 Do you agree?

04:23:44 5 A. No.

04:23:44 6 Q. Why not? Show me where in
 04:23:47 7 Brumfield this disclosure of the head of the
 04:23:49 8 screw having a larger diameter of the tunnel
 04:23:49 9 and having it butt up against the smaller
 04:23:54 10 diameter tunnel to stop the progression of the
 04:23:57 11 screw, do you think that's disclosed in
 04:23:57 12 Brumfield?

04:23:58 13 A. The screw in Brumfield is what we
 04:24:17 14 call exteriorized. It's outside on bone. So
 04:24:22 15 the head stops where it reaches bone. But it
 04:24:28 16 will — if you didn't have bone there, the head
 04:24:31 17 would stop as it reaches the nail. You can see
 04:24:35 18 the diameter is involved here and the sizes.
 04:24:38 19 The head shown in Figure 1 in Brumfield is much
 04:24:41 20 larger than the bore in the nail.

04:24:44 21 So what I was alluding to
 04:24:47 22 originally with this claim is that Cognet is
 04:24:51 23 using screws, and his performance measure is to
 04:24:56 24 sink the screw into the bored hole of the nail.

04:25:00 25 So a screw like Brumfield having a

04:25:04 1 head that's larger than the shaft or thread of
04:25:07 2 the screw could enter this bore, this first
04:25:12 3 bore, and then stop. It will stop because
04:25:15 4 there is a positive stoppage point between the
04:25:19 5 head and the bore.

04:25:23 6 So Cognet could use Brumfield's
04:25:27 7 screw, granted, a little bit shorter, but he
04:25:31 8 could use Brumfield's screw for the same
04:25:32 9 purpose, same function, to compress the bone
04:25:35 10 fragment.

04:25:38 11 Q. But Brumfield doesn't teach that,
04:25:40 12 right, doesn't teach what you're saying is
04:25:42 13 possible, but that's not what Brumfield
04:25:44 14 teaches, correct?

04:25:45 15 A. Brumfield teaches that he's using
04:25:48 16 lag screws in the head of the internal head to
04:25:51 17 reduce the fracture, and he's using a lag screw
04:25:55 18 to compress across the nail.

04:25:58 19 Q. Cognet also discloses a
04:26:00 20 countersink that we talked about, right, that
04:26:02 21 has an internal shoulder that the head abuts?
04:26:06 22 Does Brumfield disclose that?

04:26:27 23 A. I don't know how that relates to
04:26:29 24 the screw. The screw is what we're talking
04:26:31 25 about here, not whether or not Brumfield has a

04:26:35 1 counterbore.

04:26:35 2 Q. That's not my question. Can you
04:26:38 3 answer my question?

04:26:39 4 A. Repeat your question.

04:26:39 5 Q. Cognet discloses a countersink
04:26:42 6 that has an internal shoulder that the head
04:26:44 7 abuts. Does Brumfield disclose that?

04:26:47 8 A. That's not the claim that we're
04:26:59 9 using Brumfield for.

04:27:04 10 Q. It's just a question. Can you
04:27:07 11 answer the question as asked?

04:27:08 12 A. Can you repeat the question?

04:27:10 13 Q. Cognet discloses a countersink
04:27:15 14 that has an internal shoulder that the head
04:27:18 15 abuts. Does Brumfield disclose that?

04:27:21 16 A. My interpretation of Brumfield and
04:28:13 17 Figure 1 is that the screws that Brumfield is
04:28:20 18 using in this particular rod, his
04:28:23 19 intramedullary -- now, this is a femoral
04:28:28 20 intramedullary rod -- in this application for
04:28:30 21 Brumfield, the screw passes through bone,
04:28:37 22 through the nail, comes out the other side,
04:28:39 23 inserts into bone, compresses the bone by
04:28:42 24 continuing to tighten the screw through its
04:28:44 25 aperture, and compresses -- the head of the

04:28:47 1 screw compresses itself against bone. It's not
04:28:54 2 penetrating further beyond where the bone is.

04:28:56 3 So in his application, that's how
04:28:58 4 he intends to use his intramedullary nail in
04:29:02 5 combination with his screw.

04:29:04 6 What I am saying in this claim,
04:29:06 7 addressing this claim with Cognet, is that this
04:29:09 8 group, given its features, tip, threads, shank,
04:29:15 9 head, aperture, would serve as a bone screw for
04:29:21 10 Cognet, in Cognet's nail, because the Brumfield
04:29:28 11 screw could actually go into the bore.

04:29:32 12 Q. Let's look at Paragraph 101 of
04:29:45 13 your report. You state in sentence No. 2, "It
04:29:50 14 would have been obvious to a POSA to use the
04:29:55 15 screws disclosed in Brumfield with the
04:30:00 16 intramedullary nail disclosed in Cognet because
04:30:01 17 the screw and nail in Brumfield are performing
04:30:02 18 the same function in the same way as the screw
04:30:04 19 and nail in Cognet."

04:30:06 20 Now, that's incorrect, right?

04:30:09 21 A. My reading of that sentence is
04:30:23 22 that the screw and nail in Brumfield are
04:30:25 23 performing the same functions, because the
04:30:27 24 screw is providing compression across the nail.

04:30:31 25 And so Cognet's screw is providing

04:30:34 1 compression across the nail, and so is
04:30:36 2 Brumfield's screw providing compression across
04:30:40 3 the nail.

04:30:41 4 Q. But they're not doing it in the
04:30:42 5 same way, as we just discussed in Paragraph 75,
04:30:45 6 correct?

04:30:45 7 A. They are performing compression
04:31:00 8 across the fracture, because the head of the
04:31:03 9 screw in both of these instances are abutting
04:31:07 10 to a surface.

04:31:09 11 In the case of Brumfield, it's
04:31:11 12 abutting across a bone surface. In the case of
04:31:14 13 Cognet, the screw head is abutting directly
04:31:19 14 inside the aperture of the nail.

04:31:21 15 Q. And doesn't that indicate to you
04:31:23 16 that those are two different ways?

04:31:27 17 A. The physics and the engineering
04:31:32 18 behind it to provide compression, because
04:31:34 19 you're butting up against a surface, those are
04:31:38 20 providing the same -- they're providing
04:31:39 21 compressive forces.

04:31:40 22 So those forces are going to be
04:31:43 23 there whether you do it in Cognet or you do it
04:31:46 24 in the manner that Brumfield does it.

04:31:48 25 Q. Sure. If they're performing the

04:31:50 1 function of providing compressive surfaces, but
04:31:54 2 they're not doing it in the same way, correct?

04:31:56 3 A. I'm not sure I understand your
04:32:02 4 question.

04:32:02 5 Q. We just talked about minutes ago
04:32:11 6 that in Paragraph 75 Cognet's way of doing it
04:32:13 7 is that the head abuts an internal shoulder in
04:32:15 8 a countersink of the nail. You then testified
04:32:20 9 that in Brumfield compression performed by
04:32:24 10 having a nail externalized compressing against
04:32:27 11 the bone.

04:32:28 12 Aren't those two different ways of
04:32:32 13 providing compression?

04:32:33 14 A. My declaration related to the use
04:32:42 15 of Brumfield's screw is that it can be used in
04:32:50 16 the Cognet nail to reap the needs that Cognet
04:32:54 17 addressed.

04:32:54 18 Q. That's a different question,
04:32:55 19 though. I'm not asking you whether or not you
04:32:57 20 could use the Brumfield nail -- could use the
04:33:01 21 Brumfield screw and the Cognet nail. I'm
04:33:04 22 asking you whether or not it would have been
04:33:06 23 obvious to do that.

04:33:07 24 And I believe you're stating here
04:33:08 25 it would be obvious, because the screw and nail

04:33:11 1 in Brumfield are performing the same function
04:33:15 2 in the same way as the screw and nail in
04:33:18 3 Cognet, and I'm saying they aren't really doing
04:33:21 4 it in the same way, correct?

04:33:22 5 A. I say that it would be obvious to
04:33:29 6 a POSA to use the screws disclosed in
04:33:32 7 Brumfield, not Brumfield's nail, but the screws
04:33:35 8 disclosed in Brumfield with the intramedullary
04:33:38 9 nail disclosed in Cognet.

04:33:39 10 Q. Keep going.

04:33:40 11 A. The screw and nail in Brumfield
04:33:45 12 are performing the same function in the same
04:33:47 13 way as the screw and nail in Cognet.

04:33:49 14 Q. Right.

04:33:50 15 A. So my interpretation there is, and
04:33:53 16 what I meant here is, that the screw and the
04:33:55 17 nail in Brumfield are producing compression
04:34:00 18 across the fracture, which is what the screw
04:34:02 19 and nail in Cognet are doing, the same.
04:34:05 20 They're providing compression.

04:34:08 21 Q. That's the function, right? The
04:34:09 22 function is to provide compression. But the
04:34:11 23 way they do it is not the same, correct?

04:34:14 24 A. "The proximal screw in Brumfield
04:34:26 25 and Cognet is providing compression from the

04:34:29 1 intramedullary nail to the fractured bone. "

04:34:31 2 Q. Right. That's the function. But
04:34:37 3 they don't do it in the same way, correct?

04:34:39 4 A. "Proximal screw in Brumfield and
04:34:43 5 Cognet is providing compression from the
04:34:45 6 intramedullary nail to the fractured bone. "

04:34:47 7 Q. Right. That's the function,
04:34:49 8 correct? They're not doing it in the same way,
04:34:51 9 correct?

04:34:51 10 A. The proximal screw in Brumfield
04:35:15 11 and Cognet is providing compression across the
04:35:18 12 intramedullary nail to the fractured bone.

04:35:20 13 Q. Are they providing compression in
04:35:22 14 the same way?

04:35:23 15 A. "The proximal screw in Brumfield
04:35:29 16 and Cognet is providing compression from the
04:35:31 17 intramedullary nail to the fractured bone. "

04:35:33 18 Q. Right. Are they providing
04:35:35 19 compression in the same way?

04:35:40 20 A. "The proximal screw in Brumfield
04:36:26 21 and Cognet is providing compression from the
04:36:29 22 intramedullary nail to the fractured bone. " It
04:36:34 23 is being applied through the proximal screw.

04:36:36 24 Q. Okay. Is there anything else you
04:36:44 25 can provide in terms of the answer to my

04:36:46 1 question?

04:36:47 2 A. I think that's my answer.

04:36:50 3 Q. Okay. I don't think you've

04:36:53 4 answered my question, but again, I will move

04:36:57 5 on.

04:36:57 6 The head of the nail in Brumfield

04:37:06 7 is tapered, right? If we look on Page 51,

04:37:14 8 correct?

04:37:14 9 A. Yes. There is -- actually, yes,

04:37:17 10 it is a tapered bone screw head.

04:37:22 11 Q. Right. And we discussed how the

04:37:35 12 lower shoulder of the screw head in Cognet

04:37:44 13 abuts the internal shoulder in the tunnel,

04:37:48 14 correct?

04:37:50 15 A. We discussed Cognet as having

04:37:54 16 either a countersink or a counterbore hole.

04:37:58 17 Q. Correct. And we discussed how the

04:38:00 18 lower shoulder of the screw head in Cognet

04:38:03 19 abuts the internal shoulder in the countersink,

04:38:11 20 correct?

04:38:11 21 A. Yes. I think the word is

04:38:16 22 abutment.

04:38:17 23 Q. Okay. The tapered head in

04:38:23 24 Brumfield would not abut the internal shoulder

04:38:27 25 in the countersink in the same way that Cognet

04:38:30 1 discloses that its screw head abuts the
04:38:34 2 internal shoulder in the countersink, correct?

04:38:41 3 A. Let me look up for a moment how
04:39:06 4 Cognet describes the abutment.

04:39:08 5 Q. All right.

04:39:34 6 A. So the cavity aperture in Cognet,
04:39:39 7 "The cavity aperture created on the first bore
04:39:41 8 axis will ensure that the screw head enters on
04:39:45 9 the same path to the desired depth until the
04:39:47 10 screw abutment is reached as described in Claim
04:39:50 11 3. "

04:39:51 12 So that describes in Cognet that
04:39:58 13 the screw is driven until it reaches to the
04:40:05 14 desired depth until the screw abutment is
04:40:07 15 reached.

04:40:08 16 Q. Where are you reading now?

04:40:10 17 A. Paragraph 78.

04:40:13 18 Q. Okay. My question was, the
04:40:23 19 tapered head in Brumfield would not abut the
04:40:26 20 internal shoulder in the countersink in the
04:40:29 21 same way that Cognet discloses that its screw
04:40:34 22 head abuts the internal shoulder in the
04:40:37 23 countersink, correct?

04:40:38 24 A. "Cognet further discloses that the
04:40:40 25 head of the screw (first member) has a larger

04:40:43 1 diameter than the diameter of the tunnel (first
04:40:45 2 bore) which makes it possible for the head to
04:40:46 3 butt up against the smaller diameter tunnel to
04:40:49 4 stop the progression of the screw and obtain
04:40:52 5 the compression effect at the fracture site."

04:40:55 6 In Brumfield, if the Brumfield
04:41:03 7 screw is inserted in Cognet's nail, the
04:41:18 8 Brumfield screw head will stop once it reaches
04:41:24 9 the aperture or the shoulder of the aperture
04:41:27 10 because we will have a metal-to-metal contact.
04:41:31 11 You can't go further than that.

04:41:32 12 Q. Right. We talked earlier about
04:41:36 13 how Cognet's screw head has a lower shoulder,
04:41:41 14 right, like a flat surface, that abuts the flat
04:41:46 15 surface of the internal shoulder, correct?

04:41:50 16 A. Cognet described his screw head as
04:41:56 17 being diametrical, having a diameter.

04:42:01 18 Q. We talked about, you said, I think
04:42:04 19 you referred to it as a lower shoulder, right?
04:42:07 20 And then you also said the internal aperture
04:42:10 21 was kind of disk shaped. And those two
04:42:13 22 surfaces would kind of meet each other, right,
04:42:17 23 they would be two parallel surfaces, meeting,
04:42:20 24 correct?

04:42:20 25 A. Well, we described having both

04:42:25 1 countersink -- a countersink hole or a
04:42:30 2 counterbore hole. A countersink hole we
04:42:33 3 defined as having some type of linear taper as
04:42:37 4 part of the aperture.

04:42:40 5 Brumfield's screw having a taper
04:42:42 6 would match, and would make contact taper to
04:42:49 7 taper, taper hole to taper screw head. So
04:42:53 8 having a countersink would be an equivalent
04:42:55 9 match between Brumfield and having a tapered
04:42:59 10 aperture.

04:43:00 11 Another way to do it, I said in my
04:43:03 12 declaration, is that you can have a
04:43:05 13 counterbored hole, which in a counterbored hole
04:43:10 14 you have a surface, a recess.

04:43:14 15 The screw in Brumfield, if
04:43:17 16 inserted into that same counterbored hole, will
04:43:20 17 also abut and not go beyond -- not go further
04:43:27 18 beyond its point of contact, to wherever the
04:43:30 19 metal-to-metal contact, that's where it will
04:43:32 20 stop.

04:43:33 21 Q. So in your mind, if Cognet has a
04:43:35 22 countersink, there's no internal shoulder; is
04:43:39 23 that what you're thinking?

04:43:40 24 A. You could -- no, no, I'm not
04:43:48 25 saying that. If you have a countersink, all it

04:43:50 1 means is that the bore itself could have a
04:43:52 2 taper to it, but it will have a bottom to it as
04:43:59 3 well.

04:44:07 4 Q. So Cognet's countersink or
04:44:09 5 counterbore or aperture cavity, all of those
04:44:14 6 have internal shoulders, correct?

04:44:15 7 A. "Cognet creates a 'countersink or
04:46:13 8 shoulder' cavity recess inside at the entrance
04:46:16 9 to a bore hole, which is a preferred manner to
04:46:18 10 prevent a screw from entering past the
04:46:20 11 preferred penetration depth of the screw. The
04:46:23 12 internal shoulder serves to block further entry
04:46:27 13 of the screw at the moment when the screw head
04:46:30 14 contacts the internal surface of the shoulder."

04:46:37 15 Q. So Cognet discloses a nail that
04:46:39 16 has an internal shoulder, correct?

04:46:41 17 A. He is disclosing -- like I said
04:46:45 18 before, "Cognet creates a 'countersink or
04:46:47 19 shoulder' cavity recess inside the entrance to
04:46:49 20 a bore hole."

04:46:50 21 Q. Okay. So the way that the
04:46:54 22 Brumfield head impacts the shoulder would be
04:47:03 23 different than how Cognet's screw head impacts
04:47:07 24 the -- abuts the internal shoulder, correct?

04:47:12 25 A. What we were saying is that the

04:47:16 1 internal shoulder serves to further block entry
04:47:19 2 of the screw. So it is serving as a block to
04:47:24 3 go beyond that shoulder.

04:47:25 4 Q. Yeah, but the way that Brumfield's
04:47:30 5 tapered head abuts the internal shoulder would
04:47:35 6 be different than the way Cognet's screw head
04:47:39 7 abuts the internal shoulder, correct?

04:47:42 8 A. Well, you could see in Brumfield's
04:47:44 9 diagram the taper that he has is a very short
04:47:47 10 taper that only runs a little bit up to the
04:47:51 11 side of the head of the screw. So past the
04:47:54 12 taper, it's basically diametrical.

04:47:58 13 Do you see that?

04:47:58 14 Q. I do. But it doesn't have a lower
04:48:00 15 shoulder like Cognet's screw, correct?

04:48:03 16 A. The point here is that Brumfield's
04:48:10 17 screw will serve the same function as what
04:48:14 18 Cognet is desiring, because it will stop at the
04:48:20 19 shoulder.

04:48:22 20 Q. Right. But the way that
04:48:28 21 Brumfield's tapered head would abut the
04:48:30 22 internal shoulder would be different than the
04:48:32 23 way Cognet's screw head abuts the internal
04:48:34 24 shoulder, correct?

04:48:35 25 A. I didn't go into addressing

04:48:37 1 exactly the mechanism of which there is contact
04:48:42 2 there. All I'm saying is that there's an
04:48:45 3 abutment taking place between the shoulder and
04:48:47 4 the screw head. The screw head will have met
04:48:52 5 material contact with the screw, the metal of
04:48:54 6 the screw head will have material contact with
04:48:56 7 the shoulder, and there will be a positive
04:48:59 8 abutment there taking place.

04:49:00 9 Q. Right. You did not address in
04:49:02 10 your declaration the mechanism by which
04:49:06 11 Brumfield's screw head might abut the internal
04:49:10 12 shoulder in Cognet, right?

04:49:11 13 A. The basic mechanism is
04:49:13 14 metal-to-metal contact, where one metal cannot
04:49:19 15 go past the other.

04:49:20 16 Q. But you did not address the
04:49:21 17 mechanism by which Brumfield's screw head might
04:49:24 18 abut the internal shoulder in Cognet, correct?

04:49:26 19 A. As I said, the mechanism is
04:49:29 20 metal-to-metal contact. The head of the screw
04:49:31 21 cannot go past or penetrate beyond the bore.

04:49:35 22 Q. I understand metal-to-metal
04:49:37 23 contact. I understand it can't go past. But
04:49:39 24 you didn't address the mechanism by which
04:49:42 25 Brumfield's screw head might abut the internal

04:49:45 1 shoulder in Cognet, correct?

04:49:46 2 A. I'm focused on the claims of the
04:49:50 3 patent.

04:49:51 4 Q. That's not my question. Am I
04:49:53 5 correct or incorrect?

04:49:55 6 A. Again, there will be
04:49:57 7 metal-to-metal contact between the aperture and
04:50:00 8 the head of the screw.

04:50:01 9 Q. Show me in your declaration where
04:50:03 10 you address the mechanism by which Brumfield's
04:50:06 11 head might abut the internal shoulder in
04:50:11 12 Cognet's nail?

04:50:12 13 A. Cognet describes his screw as --

04:50:30 14 Q. Where are you looking now? Just
04:50:32 15 tell me where in your declaration you're
04:50:35 16 looking?

04:50:36 17 A. "Cognet further discloses that the
04:51:26 18 head of the screw (first member) has a larger
04:51:29 19 diameter than the diameter of the tunnel (first
04:51:31 20 bore) which makes it possible for the head to
04:51:33 21 butt up against the smaller diameter tunnel to
04:51:35 22 stop the progression of the screw and obtain
04:51:38 23 compression effect at the fracture site."

04:51:40 24 Q. Have you finished your answer?

04:51:45 25 A. Yes.

04:51:46 1 Q. Where were you reading from?

04:51:48 2 A. Paragraph 75.

04:51:50 3 Q. Okay. That answer is not

04:51:54 4 responsive to my question, particularly because

04:51:56 5 it says nothing about Brumfield at all, let

04:52:01 6 alone Brumfield's head.

04:52:03 7 So do you have anything further to

04:52:05 8 add to your answer to my question?

04:52:07 9 A. My declaration states in 101,

04:52:31 10 "Brumfield is analogous art because it is an

04:52:34 11 intramedullary nail secured by multiple screws.

04:52:38 12 It would have been obvious to a POSA to use the

04:52:42 13 screws disclosed in Brumfield with the

04:52:42 14 intramedullary nail disclosed in Cognet because

04:52:45 15 the screw and the nail in Brumfield are

04:52:46 16 performing the same function in the same way as

04:52:48 17 the screw and the nail in Cognet. Namely,

04:52:51 18 proximal screw in Brumfield and Cognet is

04:52:54 19 providing compression of the intramedullary

04:52:56 20 nail to the fractured bone."

04:52:58 21 And the figure that I had provided

04:53:00 22 shows all of the elements in the Brumfield

04:53:03 23 screw are the elements that Cognet defined for

04:53:11 24 his nail to be able to function properly.

04:53:13 25 Q. Okay. I don't think that answers

04:53:16 1 my question, but do you have anything further
 04:53:17 2 to add to your answer?
 04:53:18 3 A. Nothing further.
 04:53:19 4 Q. Okay. If we go to Paragraphs 107
 04:54:11 5 and 108, which is on Page 53 to 54 of your
 04:54:15 6 report. This concerns your opinions concerning
 04:54:19 7 Cognet in view of Ferrante in Claim 11 in
 04:54:25 8 particular.
 04:54:25 9 I would just like to direct your
 04:54:27 10 attention to Paragraph 108, second sentence,
 04:54:31 11 where there's a similar statement here as was
 04:54:35 12 made for Brumfield, where it says, and this is
 04:54:38 13 again in Paragraph 108, second sentence, "It
 04:54:41 14 would have been obvious to a person of skill in
 04:54:43 15 the art to use the screws disclosed in Ferrante
 04:54:46 16 with the intramedullary nail disclosed in
 04:54:49 17 Cognet because the screw and nail in Ferrante,"
 04:54:53 18 and then there's a citation, "are performing
 04:54:56 19 the same function in the same way as the screw
 04:54:58 20 and nail in Cognet."
 04:55:00 21 Do you see that?
 04:55:01 22 A. Yes, I do.
 04:55:01 23 Q. So my question is, again, just as
 04:55:04 24 I asked for Brumfield, is Ferrante performing
 04:55:09 25 the same function in the same way as the screw

04:55:14 1 and nail in Cognet?

04:55:15 2 A. Ferrante's prior art is all about
04:55:27 3 the bone screw. There's no nail, to my
04:55:29 4 recollection, involved here. He's just
04:55:31 5 patenting a bone screw with a certain aperture.

04:55:34 6 This bone screw has all of the
04:55:36 7 same features that we just discussed that
04:55:41 8 Brumfield has. It has a tip, it has threads,
04:55:44 9 and it has a neck, it has a shaft, it has a
04:55:48 10 head, a tapered head, it has an aperture, and
04:55:50 11 it has a self-tapping flute on the tip of the
04:55:59 12 screw.

04:55:59 13 So this Ferrante bone screw is, as
04:56:02 14 I stated here, "Ferrante is analogous art
04:56:06 15 because it discloses the orthopedic screws
04:56:08 16 being used in an intramedullary nail. It would
04:56:12 17 be obvious to a POSA to use the screws
04:56:14 18 disclosed in Ferrante with the intramedullary
04:56:17 19 nail disclosed in Cognet because the screw and
04:56:21 20 nail in Ferrante are performing the same
04:56:23 21 function in the same way as the screw and the
04:56:25 22 nail in Cognet. Namely, the second screw
04:56:28 23 member in Ferrante and Cognet are locking the
04:56:31 24 nail in place and has screw threads that
04:56:33 25 capture bone. "

04:56:36 1 Q. Okay. Anything further you'd like
04:56:53 2 to add to your answer?

04:56:54 3 A. Nothing further.

04:56:55 4 Q. All right.

04:57:14 5 MR. LINDENBAUM: How long have we
04:57:17 6 been going? I could just ask, Mr.
04:57:21 7 Dominguez or, Scott, or Michael, does
04:57:25 8 anyone want to take a break or should we
04:57:28 9 keep going?

04:57:32 10 COURT REPORTER: I wouldn't mind
04:57:33 11 one.

04:57:34 12 MR. LINDENBAUM: Do you want to do
04:57:36 13 maybe a five-minute break, ten minutes?
04:57:39 14 What works?

04:57:42 15 MR. KAMHOLZ: Five is fine with
04:57:44 16 me.

04:57:44 17 THE WITNESS: Five is fine.

04:57:46 18 MR. LINDENBAUM: Okay. I actually
04:57:48 19 couldn't see would asked for the break.

04:58:02 20 MR. LINDENBAUM: Fine. See you
04:58:05 21 guys in five minutes.

04:58:06 22 (Recess taken at 4:58 p.m. and
04:58:09 23 reconvening at 5:03 p.m.)

05:03:34 24 BY MR. LINDENBAUM:

05:03:34 25 Q. Mr. Dominguez, I'd like to turn to

05:03:36 1 Paragraph 116 of your declaration, which is on
05:03:41 2 Page 59, and I will share that screen for you
05:03:47 3 here.

05:03:51 4 If you could just read that
05:03:52 5 paragraph to yourself, and let me know when
05:03:54 6 you've read it.

05:04:16 7 A. Yes, I've read it.

05:04:18 8 Q. Okay. So the first sentence says,
05:04:20 9 "As discussed in the Cognet anticipation
05:04:22 10 arguments for this claim element, screws have a
05:04:26 11 shaft portion with an external surface and a
05:04:29 12 head portion with an exterior surface."

05:04:30 13 Do you see that?

05:04:31 14 A. Yes.

05:04:35 15 Q. And what's you cited here is
05:04:37 16 Section V.A.1.c for that opinion, correct?

05:04:44 17 A. Yes.

05:04:44 18 Q. So Section V.A.1.c is at Pages 24
05:04:49 19 and 25 of your report, so I'm going to jump up
05:04:51 20 to there, and this is the C here. I believe
05:05:04 21 this is what V.A.1.c is. That's what this is,
05:05:08 22 I believe. I don't know if you want to confirm
05:05:11 23 that, but I believe this is the section that's
05:05:13 24 being cited in the section we just looked at in
05:05:16 25 Paragraph 16.

05:05:24 1 A. Let me just verify.

05:05:26 2 Q. Okay. So in this section, which

05:05:31 3 is Paragraphs 47 and 48, if you look at the

05:05:35 4 third sentence of Paragraph 47, it says, "A

05:05:38 5 screw comprises a head portion as discussed

05:05:41 6 above in claim element 1[a][i] Section (b) [42]a

05:05:46 7 of this declaration."

05:05:48 8 Do you see that?

05:05:50 9 A. Yes.

05:05:50 10 Q. Correct me if I'm wrong, but it

05:05:55 11 looks like the only support for the statement

05:05:59 12 that a screw comprises a head portion is the

05:06:02 13 citation to that Section (b) [42]a of this

05:06:07 14 declaration; is that right?

05:06:08 15 A. Can you repeat the question?

05:06:20 16 Q. It looks like the only support for

05:06:23 17 the statement of a screw comprises a head

05:06:27 18 portion is the citation of Section (b) [42]a of

05:06:31 19 this declaration which concerns claim element

05:06:36 20 1[a][i]?

05:06:37 21 A. Claim element 1[a][i] refers to --

05:07:59 22 Q. Well, before we get to 1[a][i],

05:08:02 23 could you confirm that in Section V.A.1.c,

05:08:05 24 which I believe is Paragraph 47 and 48, the

05:08:08 25 only support for the statement that a screw

05:08:10 1 comprises a head portion is the discussion
 05:08:14 2 about claim element 1[a][i] in Section (b) [42] a
 05:08:19 3 of the declaration?

05:08:20 4 A. Generally speaking, a screw
 05:08:34 5 comprises a shaft portion, and that shaft would
 05:08:38 6 have threads or it could have a plain shank,
 05:08:41 7 but a screw will also contain a head.

05:08:45 8 Q. Right. I'm just looking at this
 05:08:48 9 one sentence, and it looks like you're citing
 05:08:50 10 for this sentence the support for the sentence
 05:08:53 11 here, which is the third sentence in Paragraph
 05:08:55 12 47, you're citing to Section (b) [42] a of this
 05:08:59 13 declaration.

05:08:59 14 I'm just asking you if you think
 05:09:02 15 there's any other support for the statement a
 05:09:05 16 screw comprises a head portion stated here?

05:09:08 17 A. Can we go to Section (b) [42] of
 05:09:22 18 the declaration?

05:09:22 19 Q. Yes. But before I do that, I just
 05:09:24 20 want to confirm that there's no other place to
 05:09:27 21 look, right? We're going to go through next,
 05:09:29 22 but I just want to confirm with you that that's
 05:09:31 23 the place that we should look?

05:09:33 24 A. Yeah, as I read the declaration,
 05:09:36 25 Paragraph 42 describes all of the technical

05:09:40 1 merits and aspects of a bone screw. And so in
05:09:43 2 that Section 42, it will break down all the
05:09:46 3 elements of a bone screw.

05:09:48 4 Q. Okay. So that's where we should
05:09:49 5 look for support for the statement a screw
05:09:52 6 comprises a head portion, correct?

05:10:01 7 A. Mm-hmm.

05:10:04 8 Q. I'm sorry, I didn't hear the
05:10:06 9 answer?

05:10:06 10 A. I said yes.

05:10:07 11 Q. So let's go to 42(a), which is --
05:10:13 12 let's just go to 42. So I believe this is 42,
05:10:17 13 which is on -- Paragraph 42 starts on Page 19,
05:10:22 14 and 42(a) which concerns the head runs from
05:10:26 15 Page 19 to Page 20, correct?

05:10:28 16 A. Correct.

05:10:29 17 Q. Okay. So the first sentence of
05:10:34 18 42(a) says, "Most bone screws have a head that
05:10:37 19 is tapered."

05:10:39 20 Do you see that?

05:10:40 21 A. Yes.

05:10:40 22 Q. The last sentence says, "Some
05:10:40 23 screws are 'headless' or have a
05:10:49 24 'threaded conical taper' shape," right?

05:10:51 25 A. Correct.

05:10:51 1 Q. So some screws do not have heads,
05:10:54 2 correct?

05:10:55 3 A. Correct.

05:10:57 4 Q. So some screws do not have head
05:11:06 5 portions, correct?

05:11:07 6 A. I think I call it here, some
05:11:16 7 screws are headless. So headless meaning there
05:11:19 8 is no head whatsoever to the screw.

05:11:23 9 Q. Right. So there would be no
05:11:28 10 portion of the screw that you would call the
05:11:30 11 head portion, correct?

05:11:39 12 * A. That's partially correct,
05:11:41 13 although it doesn't have a head, there is
05:11:43 14 going to be a torque driving aperture at
05:11:47 15 that end of the -- although it's a headless
05:12:00 16 screw, it will still have on one end of the
05:12:02 17 screw, that is where the head would have
05:12:04 18 been, there would be a torque driving
05:12:07 19 aperture at the end of the screw, headless
05:12:16 20 screw.

05:12:16 21 Q. I think you're cutting out a
05:12:18 22 little bit.

05:12:30 23 A. What part did you not hear? Just
05:12:30 24 read the last few words and I can remember what
05:12:32 25 I said.

05:12:33 1 MR. LINDENBAUM: Can you read
 05:12:34 2 that, Michael, to him.
 05:12:51 3 *(Reporter read).
 05:12:55 4 A. Yes.
 05:12:56 5 Q. Is it possible to have a torque
 05:12:58 6 driving aperture on both ends of a screw?
 05:12:59 7 A. If you're talking about a bone
 05:13:07 8 screw for purposes of orthopedic -- orthopedic
 05:13:12 9 bone screws --
 05:13:12 10 Q. Yes.
 05:13:13 11 A. -- one end of the bone screw
 05:13:15 12 needs to have, as I described in Section 42
 05:13:17 13 further on, needs to have a tip with a
 05:13:21 14 self-cutting flute so that the screw could be
 05:13:24 15 advanced into bone.
 05:13:28 16 So that is -- a POSA would always
 05:13:31 17 -- there's no need to insert a screw from both
 05:13:33 18 ends. It's one end having the aperture and the
 05:13:38 19 other end working to drive itself into bone.
 05:13:44 20 So there is, if you look at the
 05:13:46 21 bottom of -- let me read it to you -- what I'm
 05:13:51 22 calling the self-starting screw, is a side
 05:13:55 23 cutting edge on the tip of the screw, there's a
 05:13:58 24 definition that I gave for tip of the screw,
 05:14:01 25 which is a starting tip of the bone screw

05:14:04 1 describing the shapes that it could have, but
05:14:06 2 it could be either both sharp or blunt.

05:14:12 3 So to answer your question, to a
05:14:14 4 POSA using the technology for bone screws, it
05:14:17 5 would only make sense to have the aperture on
05:14:19 6 one end of the screw, because it's being driven
05:14:23 7 by the tip geometry on the other end.

05:14:26 8 Q. Okay. Can you predrill a hole for
05:14:31 9 the screw so you wouldn't need to rely on a
05:14:35 10 tapping tip of a screw?

05:14:39 11 A. Yeah, I believe I described that
05:14:41 12 also in this particular Section 42.

05:14:45 13 Q. In that situation, could you have
05:14:49 14 a torque driving aperture on both ends of the
05:14:54 15 screw?

05:14:54 16 A. To a POSA, having a torque
05:14:59 17 aperture at the end of both screws, it would
05:15:04 18 not make it easy for that to be -- for that
05:15:10 19 screw to penetrate bone, because it would be
05:15:14 20 very blunt. It would almost be flat in order
05:15:18 21 to have the room or the space for an aperture.

05:15:21 22 And so we would be considering
05:15:23 23 more of having either a rounded tip or a sharp
05:15:28 24 tip, depending on surgeon preference, and that
05:15:32 25 serves to self-start or biting feature when

05:15:46 1 starting in bone without the need to predrill a
05:15:49 2 bone hole.

05:15:51 3 So in other words, the tip of the
05:15:55 4 screw assists the surgeon in placing the screw
05:16:00 5 into bone because the tip will self-start or
05:16:06 6 bite into bone to allow this to happen.

05:18:11 7 Q. So I'd like you to turn to
05:18:44 8 Paragraph 120 on Page 61 of your report. I
05:18:48 9 will share it. This paragraph concerns
05:18:54 10 terminal end -- sorry, the term "terminal end."
05:19:18 11 Let me know when you are at Paragraph 120.

05:19:55 12 A. Okay. I'm at Paragraph 120.

05:19:57 13 Q. Do you see it says, "As discussed
05:19:59 14 above in Cognet claim element 1[c][ii]," and
05:20:04 15 there's a section citing, "'terminal end' is
05:20:09 16 understood by a POSA to refer to the end
05:20:13 17 closest to the outer surface of the bone as
05:20:15 18 labeled above."

05:20:17 19 Do you see that?

05:20:20 20 A. Yes.

05:20:20 21 Q. There's a figure at the top of
05:20:22 22 Page 61 that's annotated, correct?

05:20:24 23 A. Yes.

05:20:25 24 Q. And what does the green outline
05:20:27 25 represent?

05:20:28 1 A. The entire third member elongated
05:20:40 2 body pointed in green.

05:20:42 3 Q. And you identify at the very top
05:20:44 4 of the third member the first end terminal end,
05:20:50 5 correct?

05:20:50 6 A. Yes.

05:20:51 7 Q. Are you identifying here the first
05:20:59 8 end and the terminal end as the same portion of
05:21:02 9 the third member?

05:21:04 10 A. "'Terminal end' is understood by a
05:21:19 11 POSA to refer to the end closest to the outer
05:21:22 12 surface of bone as labeled above."

05:21:26 13 Q. Yes, that is what it says in
05:21:28 14 Paragraph 120, correct?

05:21:30 15 A. Yes.

05:21:31 16 Q. Are you identifying the first end
05:21:35 17 and the terminal end as the same portion of the
05:21:37 18 third member?

05:21:41 19 A. "'Terminal end' is understood by a
05:22:15 20 POSA to refer to the end closest to the outer
05:22:18 21 surface of bone as labeled" in that figure. I
05:22:23 22 am pointing towards first end/terminal end.

05:22:27 23 So by the description in the
05:22:29 24 figure, I'm pointing to the terminal end or
05:22:34 25 first end.

05:22:35 1 Q. Okay. Are you drawing a
05:22:40 2 distinction between the first end and terminal
05:22:43 3 end?

05:22:44 4 A. No. I'm just trying to be
05:22:45 5 consistent with the language used that we have
05:22:51 6 been using throughout my whole declaration of
05:22:53 7 calling something first end and second end.

05:22:57 8 So it just describes that between
05:22:59 9 the first end and the second end, there is a
05:23:02 10 straight line, third longitudinal axis, between
05:23:08 11 those two ends.

05:23:09 12 Q. But you're treating the term
05:23:12 13 "first end" and "terminal end" as synonymous?

05:23:18 14 A. In this figure, yes.

05:23:24 15 Q. If we look at the next page,
05:23:27 16 you'll see another figure. This is Figure 2
05:23:35 17 from Simon, correct?

05:23:37 18 A. Yes.

05:23:38 19 Q. I will put Simon, which is, I
05:23:41 20 believe, Exhibit 1008, in the chat as well.
05:23:49 21 You have the paper copies of everything, right?

05:23:51 22 A. I've got Exhibit 1008 on my
05:23:56 23 computer here. I'm viewing it right now. So I
05:24:01 24 do have it.

05:24:02 25 (Document marked as Exhibit 1008

05:24:04 1 for identification)

05:24:04 2 Q. Okay. And I'll put it in the chat

05:24:07 3 just in case. So am I correct that on Page 62,

05:24:26 4 it's disclosing Figure 2 of Simon or it's

05:24:35 5 depicting a portion of Figure 2 of Simon?

05:24:40 6 A. Yeah, I guess you can call it

05:24:43 7 cropped, but it is the figure in Simon with

05:24:46 8 just showing the nail positioned in the foot.

05:24:50 9 Q. And again, consistent with the

05:24:58 10 figure we saw in the prior page, the green

05:25:02 11 outline represents the entire third member,

05:25:06 12 correct?

05:25:06 13 A. Correct. The figure is pointing

05:25:09 14 to third member elongated body, yes.

05:25:13 15 Q. Again, just as in the figure on

05:25:16 16 the prior page you identified at the very top

05:25:19 17 of the third member, the first end/terminal

05:25:21 18 end, correct?

05:25:22 19 A. Correct.

05:25:22 20 Q. Okay. And so, here again, you are

05:25:27 21 treating the term "first end" and "terminal

05:25:33 22 end" as synonymous, correct?

05:25:42 23 A. Correct.

05:25:43 24 Q. Do you draw a distinction anywhere

05:25:56 25 in your declaration between the first end and

05:26:01 1 terminal end?

05:26:05 2 A. "'Terminal end' is undefined in
05:26:22 3 the specification for the '166 patent. A POSA
05:26:26 4 would understand 'terminal end' to refer to the
05:26:30 5 end of the third elongated member that aligns
05:26:35 6 closely with the top surface of the bone or
05:26:37 7 slightly below the surface of bone." That's
05:26:44 8 Paragraph 53.

05:26:45 9 Q. When you say "slightly below the
05:27:24 10 surface of bone," what do you mean by that?

05:27:29 11 A. "A POSA would understand 'at the
05:27:30 12 terminal end' to refer to a location near the
05:27:33 13 nail termination, nail head or proximal end, as
05:27:38 14 opposed to merely along the shaft that any
05:27:43 15 location or at the distal end."

05:27:46 16 Q. And you're reading from Paragraph
05:27:48 17 55, correct?

05:27:50 18 A. Yes.

05:27:51 19 Q. Okay. But in Paragraph 53, what
05:28:03 20 did you mean by "slightly below"?

05:28:05 21 A. Sometimes in its applications,
05:28:22 22 surgeons will leave the nail slightly below the
05:28:25 23 bone or slightly at the bone, but it's still
05:28:31 24 the nail termination, it's still the terminal
05:28:35 25 end of the nail.

05:28:37 1 Where it is relative to the bone
05:28:38 2 is what I was referring to here, the top
05:28:42 3 surface of the bone or slightly below the
05:28:44 4 surface of the bone.

05:28:45 5 Q. Is the terminal end the top
05:28:59 6 surface of the nail?

05:29:03 7 A. In Simon?

05:29:05 8 Q. In any nail.

05:29:09 9 A. Terminal end? Can you repeat the
05:29:11 10 question?

05:29:11 11 Q. Yes. Is the terminal end the top
05:29:13 12 surface of the nail?

05:29:14 13 A. I'm defining the terminal end in
05:29:23 14 my declaration as, "A POSA would understand
05:29:27 15 'terminal end' to refer to the end of the third
05:29:29 16 elongated member that aligns closely with the
05:29:33 17 top surface of the bone or slightly below the
05:29:35 18 surface of the bone."

05:29:38 19 Q. Right. A person of skill in the
05:29:41 20 art would want to align the top surface of the
05:29:45 21 nail with the top surface of the bone, right,
05:29:49 22 or align the top surface of the nail maybe
05:29:52 23 slightly below the surface of the bone, right?

05:29:54 24 A. We call that sinking or sinking
05:29:57 25 the nail in the bone. "A POSA would understand

05:30:01 1 'at the terminal end' to refer to a location
05:30:03 2 near the nail termination, nail head or
05:30:05 3 proximal end, as opposed to merely along the
05:30:08 4 shaft at any location or at the distal end. "

05:30:18 5 Q. When I'm looking at the language
05:30:20 6 in Paragraph 53, where it says, "A POSA would
05:30:24 7 understand 'terminal end' to refer to the end
05:30:25 8 of third elongated member that aligns closely
05:30:29 9 with the top surface of the bone. "

05:30:31 10 So that would be the top surface
05:30:35 11 of the nail, right? The terminal end you would
05:30:38 12 want to align the top surface of the nail with
05:30:40 13 the top surface of the bone, correct?

05:30:42 14 A. Yeah, but keep in mind that that
05:30:44 15 is from a surgical perspective that's really
05:30:48 16 talking a little bit more about the
05:30:50 17 methodology, the method of how these nails are
05:30:51 18 used, in that they are -- terminal end is
05:30:57 19 inserted into the bone or into the
05:30:59 20 intramedullary canal until that end reaches
05:31:04 21 proximally the surface of the bone or it could
05:31:06 22 sometimes be positioned a little below the
05:31:09 23 surface of the bone, but that's indicating the
05:31:13 24 terminal end of the nail or the terminal
05:31:19 25 position of the nail relative to the bone is

05:31:22 1 what I'm saying here, because I'm bringing in
05:31:24 2 bone along with the nail. So it's really the
05:31:26 3 terminal position of the nail relative to the
05:31:28 4 bone.

05:31:29 5 But the definition that I'm
05:31:31 6 providing in Paragraph 55 is a little bit more
05:31:34 7 precise, because it deals only with the nail
05:31:36 8 itself, not with any relationship of the bone
05:31:39 9 or position of the nail and the bone.

05:31:41 10 So I'm stating that a POSA would
05:31:43 11 understand that at the terminal end to refer to
05:31:46 12 a location near the nail termination, nail head
05:31:50 13 or proximal end as opposed to merely along the
05:31:53 14 shaft at any location or at the distal end.

05:31:58 15 Q. Let's use all of those terms.
05:32:18 16 What does "nail termination" mean?

05:32:22 17 A. The end of the nail that aligns
05:32:43 18 with the bone or terminal end.

05:32:52 19 Q. So that takes us back to Paragraph
05:32:54 20 53. Wouldn't that be the top surface because
05:32:57 21 you typically align the top surface with the
05:32:59 22 surface of the bone?

05:33:04 23 A. That's what I'm calling terminal
05:33:06 24 end. Not all terminal ends are flattened.
05:33:11 25 They could have a chamfered end.

05:33:13 1 Q. I agree, right. But the terminal
05:33:18 2 end would be the top surface of the nail,
05:33:21 3 whether or not it is flat or chamfered, for
05:33:26 4 example, correct?

05:33:28 5 A. "A POSA would understand 'at the
05:33:36 6 terminal end' to refer to a location near the
05:33:39 7 nail termination, nail head or proximal end, as
05:33:42 8 opposed to merely along the shaft or any
05:33:45 9 location or at the distal end."

05:33:48 10 Q. So for not to just be along the
05:34:01 11 shaft, it would have to pass through the top
05:34:04 12 surface of the nail, correct?

05:34:08 13 A. The terminal end is not along the
05:34:17 14 shaft past the nail termination, nail head or
05:34:21 15 proximal end. It's not in the middle of the
05:34:24 16 shaft, if you will. It's at a location or it's
05:34:28 17 not at a location at the distal end of the
05:34:30 18 shaft.

05:34:30 19 So the terminal end is near the
05:34:33 20 nail termination, nail head or proximal end.

05:34:38 21 Q. So what is -- okay. I guess I'm
05:34:53 22 trying to figure out how to -- you've got three
05:34:57 23 different words and I'm trying to figure out
05:34:59 24 the difference between them.

05:35:00 25 So what does "nail termination"

05:35:05 1 mean?

05:35:05 2 A. Going back to Paragraph 55,
05:36:00 3 "Commonly intramedullary nails are inserted
05:36:02 4 into bone with the smaller rounded end first
05:36:06 5 into the intramedullary canal and the terminal
05:36:12 6 (or head) positioned nearly flush with the
05:36:16 7 outer surface of the bone entry." Let me
05:36:21 8 repeat that. "Outer surface of the bone entry
05:36:24 9 hole."

05:36:25 10 So the terminal end here is
05:36:26 11 referring to positioning the nail in the bone
05:36:37 12 close to or just positioned near or flush with
05:36:40 13 the outer surface of the bone. That would be
05:36:47 14 terminal end.

05:36:47 15 Because we stated earlier that
05:36:50 16 some physicians elect to sink the nail further
05:36:57 17 or lead it prouder, the terminal end is a
05:37:01 18 variable position relative to bone. It could
05:37:04 19 be a little bit further down from the end of
05:37:08 20 the nail, it could be along the nail head
05:37:12 21 portion of the nail, or the proximal end of the
05:37:16 22 nail.

05:37:26 23 Q. I guess taking the last part,
05:37:28 24 you're saying the terminal end could be the
05:37:29 25 proximal end?

05:37:31 1 A. Proximal end is using the language
05:37:40 2 -- proximal end is the upper portion of the
05:37:42 3 nail.

05:37:42 4 Q. So you're saying that -- but
05:37:46 5 you're using the word "proximal end" when
05:37:50 6 you're talking about terminal end.

05:37:51 7 So it looks like you're saying
05:37:53 8 terminal end could be the proximal end? Am I
05:38:01 9 reading that incorrectly?

05:38:03 10 A. If you look at the figure above
05:38:07 11 55, circled in red, that is the entire end of
05:38:15 12 the nail aligning with the bone or terminal
05:38:18 13 end. So that entire area there of the nail is
05:38:23 14 the terminal end of the nail. It's not
05:38:27 15 necessarily -- it's more of a region, if you
05:38:34 16 will, it's a region, not necessarily a point on
05:38:39 17 the nail.

05:38:40 18 So I'm enclosing a region in red
05:38:42 19 on that figure showing that it is the end of
05:38:44 20 the nail aligning with bone or terminal end.

05:38:49 21 So that entire area there relative
05:38:51 22 to the bone, but it's really the nail looking
05:38:53 23 at it, that nail, as you see, that whole end of
05:38:57 24 the nail, is considered, for my opinion, the
05:39:03 25 proximal -- the terminal end of the nail.

05:39:06 1 So to recap, "proximal" refers to
05:39:09 2 the closest -- "A POSA would understand 'at the
05:39:14 3 terminal end' to refer to a location near the
05:39:16 4 nail termination, nail head or proximal end, as
05:39:19 5 opposed to merely along the shaft at any
05:39:24 6 location or at the distal end."

05:39:28 7 Q. Does terminal end -- can there be
05:39:47 8 a location along the shaft that is also at the
05:39:49 9 terminal end?

05:39:50 10 A. "A POSA would understand that 'at
05:40:29 11 the terminal end' to refer to a location near
05:40:31 12 the nail termination, nail head or proximal
05:40:35 13 end, as opposed to merely along the shaft at
05:40:39 14 any location or at the distal end."

05:40:43 15 Q. Right. So you're reading again
05:40:47 16 from the last sentence of Paragraph 55,
05:40:49 17 correct?

05:40:53 18 A. Yes.

05:40:53 19 Q. So my question is, where it says
05:40:55 20 "along the shaft at any location," does that
05:40:57 21 mean that if you're along the shaft at any
05:40:59 22 location, you're not at the terminal end?

05:41:01 23 A. "A POSA would understand 'terminal
05:41:27 24 end' to refer to the end of the third elongated
05:41:30 25 member that aligns closely with the top surface

05:41:32 1 of bone or slightly below the surface of bone. "

05:41:36 2 Q. Now you're reading again from
05:41:47 3 Paragraph 53, correct?

05:41:50 4 A. Correct.

05:41:50 5 Q. I don't think that answers my
05:41:52 6 question. It's not responsive to the question.
05:41:54 7 My question is only about the language in the
05:41:56 8 last sentence of Paragraph 55.

05:42:01 9 So my question again is, where it
05:42:04 10 says "along the shaft at any location," does
05:42:06 11 that mean that if you're along the shaft at any
05:42:08 12 location, you're not at the terminal end?

05:42:10 13 A. Terminal end -- "A POSA would
05:42:32 14 understand 'at the terminal end' to refer to a
05:42:34 15 location near the nail termination" -- emphasis
05:42:39 16 on "near the nail termination" -- "nail head or
05:42:42 17 proximal end. "

05:42:44 18 "Proximal end" is also emphasized,
05:42:48 19 because it is the region that I described in
05:42:50 20 that figure above showing that there is an area
05:42:54 21 there circled that is considered the terminal
05:42:59 22 end of the nail.

05:43:01 23 And also, I've circled the distal,
05:43:03 24 the rounded end or nail and the insertion end,
05:43:09 25 as another area being the distal end.

05:43:13 1 Everything in between that is considered to be
05:43:14 2 the shaft of the nail.

05:43:36 3 Q. So looking at that figure on Page
05:43:44 4 29 at the top, there's a circle there, and it's
05:43:48 5 labeled "End of nail aligning with
05:43:50 6 bone/terminal end."

05:43:52 7 So here, again, you're saying this
05:43:53 8 is the end of the nail and the terminal end,
05:43:56 9 correct?

05:43:56 10 A. I'm calling that the terminal end.

05:44:00 11 Q. Is that the proximal end?

05:44:02 12 A. Yes. That's another -- proximal
05:44:06 13 end is the top of the nail, and here distal is
05:44:09 14 the end of the nail, the blunted or rounded end
05:44:13 15 of the nail is the distal end or the insertion
05:44:16 16 end, and the top of the nail is the proximal
05:44:18 17 end of the nail.

05:44:19 18 Q. So if you look in that figure
05:44:27 19 there's what looks like a fracture that's
05:44:31 20 labeled "6."

05:44:32 21 A. Yes.

05:44:32 22 Q. That, it looks like, is not
05:44:36 23 included as at the terminal end; is that right,
05:44:41 24 because it's not in the circle you've put on in
05:44:44 25 that figure at the top of the nail?

05:44:47 1 A. That's correct. That's not -- the
05:44:54 2 line pointing to No. 6, that would be more of
05:44:59 3 the shaft portion of the nail, because it is
05:45:02 4 not at the terminal end near the nail
05:45:06 5 termination or nail head or proximal end.

05:45:12 6 So what I've circled there is
05:45:15 7 primarily what I consider to be the proximal
05:45:16 8 end, nail head, nail termination. Once you get
05:45:26 9 to six, seven, one, that portion in between the
05:45:30 10 two screws, that's the shaft portion of the
05:45:33 11 nail.

05:45:33 12 Q. Okay. And even four, it looks
05:45:38 13 like, would not be -- the line for four
05:45:42 14 intersects the nail is not where you've
05:45:45 15 indicated the terminal end is, correct?

05:45:47 16 A. Well, four is getting -- I don't
05:45:50 17 know that I have an opinion on four. Four is
05:45:52 18 really pointing towards the fastener for the
05:45:57 19 lag screw.

05:45:57 20 Q. Right. But you did the indicator
05:46:00 21 line for four is not included in the area you
05:46:02 22 circled for the end of nail aligning with
05:46:07 23 bone/terminal end. So does that indicate it
05:46:09 24 would not be part of the terminal end?

05:46:10 25 A. For my figure, I am calling the

05:46:13 1 end of the nail aligning with bone terminal end
 05:46:16 2 to be what's in the red.
 05:46:19 3 Q. So where the four is, is not near
 05:46:23 4 the terminal end, correct?
 05:46:24 5 A. Where the four is, it's slightly
 05:46:28 6 below.
 05:46:32 7 Q. Below the terminal end?
 05:46:34 8 A. Yes. Below the region, yes.
 05:46:36 9 Q. Okay. If we look to Paragraph 121
 05:46:47 10 of your declaration, which is on Pages 61 to
 05:46:59 11 62. Let me know after you have a chance to
 05:47:03 12 review that.
 05:47:08 13 A. 120?
 05:47:10 14 Q. Paragraph 121, which is on Pages
 05:47:14 15 61 to 62.
 05:47:16 16 A. Yes.
 05:47:21 17 Q. Do you see that you state in the
 05:47:23 18 first sentence of Paragraph 121, "Claim 1
 05:47:26 19 allows for the first bore axis to be at 90
 05:47:30 20 degrees relative to the third longitudinal axis
 05:47:33 21 (i.e., the first angle can be 90 degrees)," and
 05:47:38 22 you cite to actually a portion of the '166
 05:47:43 23 patent. And then you say, "This would mean
 05:47:45 24 that the first aperture (the first end of the
 05:47:48 25 first bore) was oriented on the exterior

05:47:52 1 surface of the third member at the terminal

05:47:56 2 end. "

05:47:57 3 Do you see that?

05:47:58 4 A. Yes.

05:48:03 5 Q. What do you mean by "on the

05:48:07 6 exterior surface"?

05:48:47 7 A. Can you repeat the question once

05:48:49 8 more?

05:48:51 9 MR. LINDENBAUM: Michael, would

05:48:52 10 you mind reading it back.

05:49:40 11 (Reporter read back pending

05:49:46 12 question)

05:49:46 13 A. This would mean that the first

05:49:47 14 aperture, the first end of the first bore in

05:49:50 15 the Simon nail, was oriented on the exterior

05:49:54 16 surface of the third member, and it's located

05:49:57 17 at the terminal end.

05:49:59 18 So in other words, "the first

05:50:02 19 aperture (the first end of the first bore) was

05:50:04 20 oriented on the exterior surface of the third

05:50:06 21 member at the terminal end. Simon discloses 'a

05:50:17 22 number of proximal and distal fastener holes.'

05:50:21 23 Simon discloses a fastener (hole 20 in Figure

05:50:24 24 2) at the terminal end of the third elongated

05:50:28 25 body as shown below. "

05:50:30 1 Q. When you say in the second
05:50:33 2 sentence "the exterior surface," do you mean
05:50:37 3 along the shaft of the nail?

05:50:38 4 A. I'm calling it the terminal end.
05:50:51 5 But because it is a perpendicular hole, you're
05:50:55 6 having to direct your drill to create that bore
05:50:59 7 perpendicular to the nail, to the nail axis.

05:51:03 8 So that hole, that first aperture,
05:51:07 9 while it's at the first terminal end, it is
05:51:10 10 coming in from the side of the nail.

05:51:14 11 Q. So it's coming in through the
05:51:18 12 shaft?

05:51:20 13 A. It's coming in through the
05:51:24 14 terminal end, because it's including -- the
05:51:28 15 terminal end is inclusive of that first
05:51:30 16 aperture.

05:51:40 17 "Simon discloses an intramedullary
05:51:43 18 nail where the terminal end has 'at least one
05:51:46 19 bore which extends transversely to the central
05:51:49 20 axis of the nail for receiving a stable angle,
05:51:55 21 a bone fastener,' which teaches an aperture at
05:51:57 22 the terminal end."

05:51:58 23 Q. Okay. Are you stating in
05:52:06 24 Paragraph 121 that because Claim 1 recites that
05:52:12 25 the angle between the first bore axis and the

05:52:14 1 third longitudinal axis could include 90
05:52:19 2 degrees, that the first aperture may be located
05:52:21 3 on the exterior surface of the third member?

05:52:24 4 A. "Simon also discloses an
05:52:39 5 intramedullary nail with a terminal end has 'at
05:52:41 6 least one bore which extends transversely to
05:52:44 7 the central axis of the nail for receiving a
05:52:47 8 stable angle a bone fastener,' which teaches an
05:52:54 9 aperture at the terminal end."

05:52:57 10 Q. What does that mean?

05:53:02 11 A. It means the first aperture is at
05:53:19 12 the terminal end of the Simon nail.

05:53:23 13 Q. Well, it says "Simon also
05:53:29 14 discloses an intramedullary nail where the
05:53:31 15 terminal end has," and then you quote from
05:53:36 16 Paragraph 15 of Simon, correct?

05:53:38 17 A. Where are you reading now?

05:53:43 18 Q. In Paragraph 122, is that where
05:53:47 19 you have been reading?

05:53:48 20 A. Yes.

05:53:48 21 Q. So you -- I want to first -- I'm
05:53:54 22 going to get to 122 in a second, but I want to
05:53:57 23 first focus on 121, which is why you reached
05:54:00 24 your conclusion that you reached in 121.

05:54:02 25 And you state that, in 121, "Claim

05:54:11 1 1 allows for the first bore axis to be at 90
05:54:15 2 degrees relative to the third longitudinal
05:54:18 3 axis. "

05:54:18 4 So what I understood you to mean
05:54:20 5 is that the first bore axis can be, you know,
05:54:24 6 horizontal essentially, right, relative to the
05:54:27 7 vertical nail. And then you say, "This would
05:54:32 8 mean that the first aperture was oriented on
05:54:36 9 the exterior surface of the third member at the
05:54:39 10 terminal end. "

05:54:41 11 And so what I'm trying to
05:54:43 12 understand is the significance of your opinion
05:54:45 13 here. When you say, "This would mean that the
05:54:47 14 first aperture was oriented on the exterior
05:54:50 15 surface of the third member," are you saying
05:54:53 16 that because that if you accept that the first
05:54:59 17 member can be 90 degrees relative to the third
05:55:02 18 member, that that must mean that the first
05:55:05 19 aperture is along the shaft? I guess that's my
05:55:16 20 question. Is that what you mean?

05:55:17 21 A. Or at least -- yes, yes, in a
05:55:21 22 nutshell, yes. Because the first aperture is
05:55:27 23 at -- could be positioned -- you can position a
05:55:30 24 bone screw through the terminal end of the nail
05:55:33 25 at 90 degrees, that would require the aperture

05:55:35 1 of that first aperture for the hole to be along
05:55:41 2 the proximal end, but also include part of the
05:55:47 3 shaft.

05:55:47 4 Q. Okay. In Cognet, which I will
05:55:53 5 show you on the screen here, does the first
05:56:00 6 member, which I think you've identified as
05:56:04 7 element four, does it pass through -- is it
05:56:10 8 oriented -- I'm sorry.

05:56:12 9 Is the first aperture oriented on
05:56:14 10 the exterior surface of the third member?

05:56:17 11 A. "A POSA would understand 'terminal
05:56:53 12 end' to refer to the end of the third elongated
05:56:56 13 member that aligns closely with the top surface
05:56:58 14 of the bone or slightly below the" bone or
05:57:01 15 "surface of the bone."

05:57:02 16 Q. You're not answering my question.
05:57:04 17 Is the first aperture in Cognet oriented on the
05:57:07 18 exterior surface of the third member?

05:57:10 19 A. It is located on the terminal end
05:57:32 20 of the Cognet nail.

05:57:34 21 Q. Is that on the exterior surface of
05:57:40 22 the Cognet nail?

05:57:40 23 A. My definition of terminal end, it
05:57:49 24 would include -- let's go to that section
05:57:52 25 again.

05:57:58 1 Q. I'm not sure why you're talking
05:58:00 2 about terminal end. I'm just asking you if
05:58:01 3 it's on the exterior surface, which I think
05:58:06 4 we've agreed is the shaft.

05:58:08 5 So is the aperture, the first
05:58:12 6 aperture that you've identified in Cognet, on
05:58:16 7 the shaft of Cognet's nail?

05:58:19 8 A. "A POSA would understand 'terminal
05:59:01 9 end' to refer to the end of the third elongated
05:59:03 10 member that aligns closely with the top surface
05:59:05 11 of the bone or slightly below the surface of
05:59:07 12 the bone."

05:59:10 13 Q. Okay. Where are you reading now?

05:59:11 14 A. That was 53.

05:59:18 15 Q. My question does not ask anything
05:59:22 16 about -- I don't think it implicates the
05:59:27 17 terminal end. My question is merely, does the
05:59:29 18 first aperture you've identified in Cognet, is
05:59:31 19 it oriented on the exterior surface of the
05:59:36 20 nail?

05:59:36 21 A. "A POSA would understand 'at the
05:59:39 22 terminal end' to refer to a location near the
05:59:42 23 nail termination, nail head or proximal end, as
05:59:45 24 opposed to merely along the shaft at any
05:59:49 25 location or at the distal end."

05:59:51 1 Q. Okay. So can you look at Figure 1
05:59:53 2 of Cognet, which I have on the screen.

06:00:00 3 A. Yes.

06:00:01 4 Q. Okay. Do you see -- do you
06:00:04 5 understand where you've identified the first
06:00:06 6 aperture in Cognet?

06:00:08 7 A. If you look at the top of Page
06:00:14 8 29 --

06:00:14 9 Q. Sure. In your declaration; is
06:00:16 10 that where I'm going?

06:00:17 11 A. -- it establishes what the
06:00:20 12 terminal end is in Cognet, the area circled in
06:00:23 13 red.

06:00:23 14 Q. I don't believe my question
06:00:25 15 implicates the location of the terminal end.
06:00:29 16 If you look at -- okay. Hold on a second. 29.

06:00:34 17 Now, if you look at, for example,
06:00:36 18 the infection page or even the page after, look
06:00:38 19 at Page 31. Okay? Do you see how you've
06:00:43 20 identified the first aperture on Page 31?

06:00:47 21 A. Yeah, but I'm using the figure on
06:00:49 22 Page 29 to --

06:00:51 23 Q. But I want to ask you about the
06:00:53 24 first aperture, not the terminal end. You
06:00:57 25 might -- we could have a discussion about the

06:01:00 1 first aperture relative to the terminal end,
06:01:02 2 but my question is not that.

06:01:03 3 My question is whether or not the
06:01:06 4 first aperture is oriented on the exterior
06:01:08 5 surface of the nail?

06:01:12 6 A. The figure on top of Page 29
06:01:24 7 indicates in red what we're defining as the
06:01:29 8 terminal end, that entire area close to the
06:01:34 9 bone and the nail.

06:01:38 10 Q. Let me ask it a different way. We
06:01:40 11 discussed that the nail or top surface of the
06:01:42 12 nail in Cognet is a chamfered surface?

06:01:46 13 A. Mm-hmm, yes.

06:01:47 14 Q. Do you consider that to be part of
06:01:52 15 the shaft?

06:01:54 16 A. I consider that to be the terminal
06:01:58 17 end of the nail.

06:01:58 18 Q. Do you consider it to be part of
06:02:02 19 the shaft?

06:02:06 20 A. "A POSA would understand 'at the
06:02:20 21 terminal end' to refer to a location near the
06:02:22 22 nail termination, nail head or proximal end as
06:02:25 23 opposed to merely along the shaft at any
06:02:29 24 location or at the distal end."

06:02:31 25 Q. Okay. So are you reading about

06:02:35 1 the terminal end because you believe the
06:02:37 2 chamfered surface, which I'm asking you about,
06:02:40 3 is the terminal end?

06:02:41 4 A. Based on this figure on the top of
06:02:45 5 Page 29, the entire area that I've circled in
06:02:50 6 red, that's part of the rod -- I'm sorry, is
06:02:55 7 considered terminal end.

06:02:57 8 Q. So in that section, right,
06:03:02 9 includes the chamfered surface, correct?

06:03:06 10 A. That's part of the terminal end.

06:03:13 11 Q. Okay. Is the chamfered surface
06:03:16 12 part of the shaft of the nail?

06:03:19 13 A. "A POSA would understand that 'at
06:03:26 14 the terminal end' to refer to the location near
06:03:28 15 the nail termination, nail head or proximal
06:03:32 16 end, as opposed to merely along the shaft at
06:03:35 17 any location or at the distal end."

06:03:39 18 Q. Okay. You're reading from
06:03:41 19 Paragraph 55 again, correct?

06:03:45 20 A. Yes.

06:03:46 21 Q. Okay. Can you answer my question,
06:03:47 22 though? That was not responsive to my
06:03:50 23 question. That answer was not responsive.

06:03:51 24 Can you answer my question?

06:03:53 25 A. "Cognet further discloses the

06:04:01 1 first aperture at the terminal end of the third
06:04:05 2 elongated body as shown" in the figure on
06:04:08 3 Paragraph 57. "There is an orifice or tunnel,"
06:04:14 4 and I'm quoting Cognet, "There is an orifice or
06:04:18 5 tunnel at the top of the nail which follows in
06:04:20 6 an oblique downward path towards the coronoid
06:04:25 7 process. "

06:04:26 8 Q. None of that answers the question
06:04:27 9 of whether or not you consider the chamfered
06:04:29 10 surface at the top of Cognet's nail to be part
06:04:32 11 of the shaft or not, right? So can you answer
06:04:36 12 that question?

06:04:38 13 A. "A POSA would understand 'at
06:04:38 14 the terminal end' to refer to a location
06:04:38 15 near the nail termination, nail head or
06:04:38 16 proximal end, as opposed to merely along the
06:04:55 17 shaft at any location or at the distal end. "

06:04:55 18 Q. Okay. Again, that's the second or
06:04:58 19 third time you've read that sentence in
06:05:00 20 response to this question, and it is still not
06:05:02 21 responsive to my question.

06:05:06 22 I guess, do you have anything
06:05:11 23 further to add to answer my question?

06:05:14 24 A. That is my answer to your question
06:05:16 25 and my definition of "terminal end. "

06:05:19 1 Q. And again, I'm not asking you for
06:05:21 2 a definition of terminal end. I didn't even
06:05:23 3 mention the term "terminal end" in my question.
06:05:26 4 But if you have nothing further to add, I will
06:05:28 5 assume you are unwilling or unable to answer
06:05:31 6 the question, and I will move on.
06:05:33 7 Am I correct that you have nothing
06:05:35 8 further to add to your answer?
06:05:36 9 A. I have nothing further to add.
06:05:38 10 Q. Okay.
06:05:44 11 MR. KAMHOLZ: We have been on for
06:05:46 12 about eight hours. I think we're
06:05:48 13 approaching the time limit.
06:05:49 14 MR. LINDENBAUM: That cannot be,
06:05:51 15 because we started at ten, and we took
06:05:53 16 about a 45-minute break for lunch, and
06:05:57 17 we've taken other breaks throughout.
06:06:00 18 MR. KAMHOLZ: By my calculation we
06:06:02 19 took a 15-minute break, a 13-minute
06:06:04 20 break, a 33-minute break -- that was
06:06:06 21 lunch -- an 11-minute break, and then a
06:06:10 22 five-minute break.
06:08:16 23 (Recess taken at 6:06 p.m. and
06:08:22 24 reconvening at 6:23 p.m.)
06:23:45 25 BY MR. LINDENBAUM:

06:23:45 1 Q. Mr. Dominguez, I'd like to jump
06:23:51 2 down towards the end of your report where you
06:23:53 3 have Paragraphs 166 and 167 on Pages 81 and 82
06:23:58 4 where you discuss Simon in view of Leu, which
06:24:02 5 has been marked as Exhibit 1009, and I've
06:24:13 6 placed that also in the chat.

06:24:14 7 Let me know if you see Paragraphs
06:24:18 8 166 and 167 of your declaration on the screen?
06:24:18 9 (Document marked as Exhibit 1009
06:24:22 10 for identification)

06:24:22 11 A. Yes, I see it.

06:24:27 12 Q. I want to focus on Paragraph 167
06:24:29 13 in particular. If you could just review that,
06:24:31 14 and let me know when you've finished reviewing
06:24:33 15 it.

06:24:57 16 A. Yes, I've finished reading
06:24:59 17 Paragraph 167.

06:25:00 18 Q. Okay. So I want to focus on the
06:25:02 19 second sentence, where it says, "It would have
06:25:05 20 been obvious to a person of ordinary skill in
06:25:08 21 the art to combine Leu with Simon because Simon
06:25:12 22 gives an example embodiment that is an
06:25:16 23 intramedullary nail intended for insertion in a
06:25:19 24 longer bone," and you cite Paragraph 57 of
06:25:24 25 Exhibit 1008, which is Simon, "and cites to Leu

06:25:28 1 as an example of an intramedullary nail
06:25:30 2 intended for insertion in a longer bone," and
06:25:36 3 you cite Paragraph 15 of Simon.

06:25:38 4 Do you see that?

06:25:39 5 A. Yes.

06:25:40 6 Q. Okay. So I'd like to pull up
06:25:43 7 Simon, Exhibit 1008, and I'd like to look at
06:25:57 8 the two paragraphs that you cite from Simon.

06:25:59 9 The first one you cite is
06:26:00 10 Paragraph 57, which is way at the end of Simon,
06:26:06 11 which is here, which is on Page 5 right before
06:26:09 12 the claims. I'm putting it up on the screen
06:26:23 13 here and share 1008.

06:26:26 14 So take a look at Paragraph 57,
06:26:29 15 please, of Simon that's on the screen. You
06:26:32 16 will see it says, "The implant was a small
06:26:35 17 intramedullary Smith & Nephew nail intended for
06:26:38 18 insertion in a longer bone. The fasteners were
06:26:40 19 locking screws inserted into the transfixation
06:26:43 20 holes and also into the talus and first
06:26:50 21 metatarsal bones. Such a device is an
06:26:54 22 embodiment of the present invention."

06:26:56 23 Do you see that?

06:26:57 24 A. Yes, I do.

06:26:58 25 Q. Okay. And my understanding is,

06:26:58 1 and tell me if you agree, is that when it talks
06:26:59 2 about the implant, it's actually referring to
06:27:04 3 an experimental procedure you'll see here
06:27:10 4 beginning in Paragraph 56 it says, "Figure 3 is
06:27:13 5 an x-ray figure taken in an experimental
06:27:18 6 procedure," and Paragraph 57 discusses the
06:27:22 7 implant that was used in the experimental
06:27:22 8 procedure, correct?

06:27:23 9 A. Yes.

06:27:24 10 Q. And so why is this information in
06:27:29 11 Paragraph 57 relevant to whether or not someone
06:27:33 12 would -- excuse me, a person of skill in the
06:27:38 13 art would have found it to be obvious to
06:27:41 14 combine Leu with Simon?

06:27:43 15 A. "Leu is analogous art because it
06:28:03 16 is an intramedullary nail secured by multiple
06:28:07 17 screws. It would be obvious to a POSA to
06:28:09 18 combine Leu with Simon because Simon gives an
06:28:12 19 example embodiment that is an intramedullary
06:28:15 20 nail intended for insertion in a longer bone,"
06:28:20 21 and cites to Leu as an example of an
06:28:22 22 intramedullary nail intended for insertion in
06:28:26 23 longer bone, and both of these intramedullary
06:28:29 24 nails require bone screws.

06:28:32 25 Q. Okay. So let's, then, look at

06:28:37 1 Paragraph 15, because that is where Leu is
06:28:41 2 cited, correct? Okay. So if you look at
06:28:46 3 Paragraph 15 now of Simon, and I have it on the
06:28:48 4 screen on Page 2, it says, "U.S. Patent No.
06:28:54 5 6,270,499." That is Leu, correct? I can pull
06:29:02 6 up lieu. Hold on a second.

06:29:18 7 So I'm going to put up Leu. And
06:29:22 8 you'll see that Leu is on the screen. It is
06:29:28 9 Patent No. 6,270,499.

06:29:33 10 Do you see that?

06:29:33 11 A. Yes.

06:29:33 12 Q. All right. If we go back to
06:29:35 13 Simon, I think we'll see Paragraph 15 here of
06:29:43 14 Simon on Page 2 cites to that patent number.

06:29:46 15 So I believe Leu is cited in
06:29:47 16 Paragraph 15, right?

06:29:49 17 A. Yes.

06:29:56 18 Q. It says the patent in Leu
06:29:58 19 describes an "intramedullary nail and screw
06:30:00 20 where the proximal end has at least one bore
06:30:04 21 which extends transversely to the central axis
06:30:09 22 of the nail for receiving at a stable angle a
06:30:12 23 bone fastener."

06:30:13 24 So can you explain to me why,
06:30:15 25 given this paragraph, Paragraph 15, and the

06:30:17 1 discussion of the device used in the
 06:30:24 2 experimental procedure as disclosed in
 06:30:25 3 Paragraph 57, would indicate that it's obvious
 06:30:29 4 that a person of skill in the art would think
 06:30:31 5 to combine Leu with Simon?

06:30:33 6 A. "Leu is analogous art because it
 06:31:45 7 is an intramedullary nail secured by multiple
 06:31:47 8 screws," and it has "been obvious to a POSA to
 06:31:50 9 combine Leu with Simon because Simon gives an
 06:31:54 10 example embodiment that it is an intramedullary
 06:31:55 11 nail intended for insertion into longer bone,"
 06:31:57 12 and cites Exhibit 1008, "and cites to Leu as an
 06:32:04 13 example of an intramedullary nail intended for
 06:32:06 14 insertion in a longer bone," again, Exhibit
 06:32:14 15 1008, 15.

06:32:15 16 Q. And you're reading from Paragraph
 06:32:17 17 167, correct?

06:32:18 18 A. Yes.

06:32:18 19 Q. Okay. So if you look at Paragraph
 06:32:43 20 15, which I have on the screen, why do you
 06:32:50 21 think that paragraph indicates that Simon cites
 06:32:52 22 to Leu as an example of an intramedullary nail
 06:32:56 23 intended for insertion in a longer bone?

06:32:58 24 A. Well, the figures provided by Leu
 06:33:13 25 in his patent describes a longer nail -- in

06:33:19 1 this particular case, it's a tibial nail, a
06:33:22 2 longer bone, but it has all the same features
06:33:26 3 that Simon has, meaning that it's an
06:33:28 4 intramedullary nail, proximal screw and distal
06:33:34 5 screw holes.

06:33:34 6 Q. Paragraph 15 doesn't indicate that
06:33:39 7 Simon is citing Leu as an example of a nail
06:33:45 8 intended for a longer bone, correct?

06:33:49 9 A. What is this document that you
06:33:55 10 have here?

06:33:56 11 Q. Sorry. This is Simon.

06:34:00 12 A. Simon? Okay.

06:34:01 13 Q. Yes, this is Simon, Exhibit 1008,
06:34:04 14 and I'm at Page 2 of the specification, and I'm
06:34:10 15 looking at Paragraph 15.

06:34:29 16 A. Okay. Here in Paragraph 15, Simon
06:34:37 17 is using Leu as a prior art reference, and
06:34:43 18 describing that the patent describes an
06:34:46 19 intramedullary nail with a proximal end, has at
06:34:49 20 least one bore, which extends transversely to
06:34:52 21 the central axis of the nail for receiving a
06:34:54 22 stable angle, a bone fastener.

06:34:58 23 So those elements are the elements
06:35:01 24 that Simon is having in his device, which is an
06:35:07 25 intramedullary nail, with a proximal end, at

06:35:09 1 least one bore, which extends transversely to
06:35:13 2 the central axis of the nail for receiving a
06:35:16 3 stable angle, a bone fastener.

06:35:20 4 Q. Does that indicate any
06:35:22 5 consideration of longer bones?

06:35:24 6 A. Well, in Simon, he's using his
06:35:37 7 nail in the longer bone -- in the metatarsal
06:35:40 8 bone of the foot which goes just below your
06:35:45 9 toe, your big toe, all the way into your talus.
06:35:50 10 So it's a fairly long nail.

06:35:52 11 Here in Leu, his depiction of a
06:35:59 12 nail is really not a full length -- what I
06:36:02 13 would consider a full length tibial nail. It's
06:36:05 14 a very short nail. It only covers the first
06:36:07 15 proximal end of the tibia. So it is relatively
06:36:11 16 a short nail when it comes to a tibial nail.

06:36:14 17 So I don't know that length has a
06:36:17 18 whole lot to do with it. You can make it as
06:36:19 19 long as you need to or as short as you need to,
06:36:21 20 but it has all of the elements of having a
06:36:25 21 proximal end with a screw, an intramedullary
06:36:27 22 nail, and a distal hole for the second screw.

06:36:30 23 Q. Okay. But in Paragraph 167 of
06:36:33 24 your declaration, you mentioned longer bone
06:36:36 25 twice. You say that a person of skill in the

06:36:39 1 art -- "It would have been obvious to a person
06:36:41 2 of skill in the art to combine Leu with Simon
06:36:44 3 because Simon gives an example embodiment that
06:36:47 4 is an intramedullary nail intended for
06:36:49 5 insertion in a longer bone," and cites to Leu
06:36:52 6 as an example of an intramedullary nail
06:36:54 7 intended for insertion in a longer bone.

06:36:56 8 So my question is, focusing on
06:36:59 9 Paragraph 15, is there any indication that
06:37:02 10 Simon was citing this -- citing Leu because it
06:37:10 11 is intended for insertion in a longer bone?

06:37:12 12 A. I believe in Simon's patent, that
06:37:16 13 paragraph that you read concerning Figure 3,
06:37:19 14 Simon discloses that he used a Smith & Nephew
06:37:25 15 nail, a long Smith & Nephew nail, for this
06:37:29 16 experimental -- we call it experimental
06:37:31 17 procedure, but basically took -- he's
06:37:33 18 describing that he took a Smith & Nephew nail,
06:37:37 19 a long one, and used it for the metatarsal
06:37:44 20 portion of the foot.

06:37:46 21 Q. Okay. So, yes. It says in
06:37:51 22 Paragraph 57, the implant was a small
06:37:53 23 intramedullary Smith & Nephew nail intended for
06:37:55 24 insertion of a longer bone. Okay. But you
06:38:00 25 also say that Paragraph 15 is cited -- cites to

06:38:07 1 Leu as an example of a nail intended for
06:38:09 2 insertion in a longer bone.

06:38:11 3 But there's no indication in
06:38:12 4 Paragraph 15 that that's why Leu is cited,
06:38:15 5 correct?

06:38:15 6 A. Can you repeat that question
06:38:25 7 again?

06:38:26 8 Q. Yes. You say in Paragraph 167 of
06:38:32 9 your declaration that Paragraph 15 "cites to
06:38:35 10 Leu as an example of a ... nail intended for
06:38:38 11 insertion in a longer bone." But there's no
06:38:41 12 indication in Paragraph 15 that that's why Leu
06:38:45 13 is cited, correct?

06:38:46 14 A. Can I see 0057?

06:40:03 15 Q. Sure.

06:40:08 16 A. In 0057, Simon states the implant
06:40:48 17 was a small intramedullary Smith & Nephew nail
06:40:53 18 intended for insertion in a longer bone.

06:41:01 19 So to me, I could interpret that
06:41:05 20 as saying that he's using a shorter or small
06:41:12 21 intramedullary nail that's intended to be --
06:41:18 22 that's intended for insertion in a longer bone.

06:41:21 23 So just because it's being used in
06:41:22 24 a longer bone doesn't mean that the nail has to
06:41:25 25 be extremely long from one end of the tibia to

06:41:29 1 the other. It could be a shorter nail intended
06:41:32 2 for longer bone. It could be a short nail
06:41:35 3 inside a longer bone. It doesn't have to go
06:41:37 4 all the way down to the ankle.

06:41:45 5 The length of the nail doesn't
06:41:47 6 have to go all the way down toward the foot.
06:41:49 7 It could stop somewhere up, you know, in the
06:41:52 8 midsection of the tibia and not be a long nail.
06:41:57 9 It could be a shorter nail inside a long bone.

06:42:00 10 Q. How do you link Paragraph 57 to
06:42:03 11 Paragraph 15 which discloses Leu?

06:42:09 12 A. Leu is disclosing a short nail in
06:42:12 13 the tibia. It's not a long nail in the tibia.
06:42:20 14 It's a short nail in the tibia.

06:42:23 15 Q. Paragraph 15 doesn't mention
06:42:25 16 anything about the length of the nail in Leu.
06:42:29 17 It doesn't say we're citing Leu because of any
06:42:33 18 particular length of the nail. It just cites
06:42:36 19 to Leu.

06:42:36 20 A. The figures in Leu, when you look
06:42:38 21 at it, you can see it's a smaller version of a
06:42:41 22 nail in a long bone.

06:42:43 23 Q. Right. But you're saying that a
06:42:45 24 person of skill in the art considering
06:42:46 25 Paragraph 15 and 57 would find it obvious to

06:42:52 1 combine Simon with Leu, and I'm saying I don't
 06:42:54 2 see why there's any connection between
 06:42:55 3 Paragraph 57 and 15, and that certainly Simon
 06:43:03 4 doesn't seem to indicate there's any reason
 06:43:04 5 that you would draw that connection?

06:43:05 6 A. My connection is that Leu is an
 06:43:08 7 analogous art because it is an intramedullary
 06:43:11 8 nail, secured by multiple screws.

06:43:29 9 Q. Okay. So what does that have to
 06:43:34 10 do with Paragraph 57?

06:43:35 11 A. Go back to Paragraph 57.

06:43:44 12 Q. It's on the screen.

06:43:45 13 A. So here Simon uses a small version
 06:44:01 14 or a short version of a Smith & Nephew nail
 06:44:04 15 intended for insertion in a long bone and he
 06:44:07 16 uses it in the longest bone of the foot, the
 06:44:11 17 metatarsal.

06:44:13 18 Q. Okay. So what does that have to
 06:44:16 19 do with Leu?

06:44:17 20 A. Well, Leu is also -- Leu also has
 06:44:20 21 -- Leu also describes a smaller version of an
 06:44:23 22 intramedullary nail that's intended for
 06:44:26 23 insertion into a bone.

06:44:29 24 Q. Okay. But you agree that
 06:44:30 25 Paragraph 15 of Simon doesn't make any mention

06:44:34 1 of the size of the nail in Leu, right? I
 06:44:38 2 understand that that's what your understanding
 06:44:41 3 of Leu is, but Simon doesn't say that, correct?

06:44:44 4 A. Leu and Simon are analogous art,
 06:45:34 5 because they are both intramedullary nails
 06:45:36 6 secured by multiple screws. We have a proximal
 06:45:40 7 screw at the top end of the nail, we have a
 06:45:42 8 distal screw at the lower end of the nail.

06:45:44 9 Regardless of what the nail length
 06:45:47 10 is, it is an intramedullary nail used inside a
 06:45:51 11 bone. Here Leu uses it in the proximal end of
 06:45:57 12 the tibia and Simon uses it in the metatarsal
 06:46:00 13 bone of the foot.

06:46:00 14 Q. Okay. But --

06:46:02 15 MR. KAMHOLZ: Counsel, we've gone
 06:46:03 16 more than 19 minutes.

06:46:05 17 MR. LINDENBAUM: Okay. All right.
 06:46:23 18 I guess, Mr. Dominguez, thank you for
 06:46:26 19 your time.

06:46:27 20 THE WITNESS: Thank you, Mr.
 06:46:29 21 Lindenbaum.

06:46:29 22 MR. LINDENBAUM: Before I turn the
 06:46:31 23 deposition over to you, Mr. Kamholz, two
 06:46:35 24 things. As I indicated throughout the
 06:46:42 25 deposition, we believe that a lot of the

06:46:44 1 responses, the answers that Mr.
06:46:46 2 Dominguez gave to questions were not
06:46:48 3 responsive, so we'll have to address
06:46:50 4 that.

06:46:51 5 But also, as indicated earlier in
06:46:55 6 the deposition, it seemed that at least
06:46:57 7 one of the quotes concerning Cognet was
06:47:01 8 from a translation that was not produced
06:47:05 9 to us, but seems to have been relied
06:47:08 10 upon by Mr. Dominguez in forming his
06:47:10 11 opinion in his report.

06:47:11 12 We request that you see whether or
06:47:16 13 not there is any other alternative
06:47:17 14 translation that was used by Mr.
06:47:22 15 Dominguez during preparation of his
06:47:24 16 declaration, and that you produce that
06:47:26 17 to us if you find that's the case.

06:47:31 18 MR. KAMHOLZ: Understood. I'd
06:47:40 19 like to take a ten-minute break.

06:47:42 20 (Recess taken at 6:47 p.m. and
06:47:48 21 reconvening at 6:56 p.m.)

06:56:15 22 EXAMINATION BY

06:56:16 23 MR. KAMHOLZ:

06:56:16 24 Q. Mr. Dominguez, are you aware that
06:56:18 25 you are still under oath?

06:56:19 1 A. Yes.

06:56:20 2 Q. At several points during your

06:56:28 3 cross examination, Mr. Lindenbaum stated that

06:56:30 4 your answers were nonresponsive.

06:56:32 5 Do you recall that?

06:56:32 6 A. Yes.

06:56:33 7 Q. Do you consider any of your

06:56:35 8 answers to have been nonresponsive?

06:56:37 9 A. No.

06:56:46 10 Q. At several points during your

06:56:48 11 cross examination, Mr. Lindenbaum stated that

06:56:50 12 he would assume that you were unwilling or

06:56:53 13 unable to answer his question.

06:56:54 14 Do you recall that?

06:56:55 15 A. Yes.

06:56:55 16 Q. Were you unable to answer any of

06:57:03 17 Mr. Lindenbaum's questions?

06:57:04 18 A. No.

06:57:05 19 Q. Were you unwilling to answer any

06:57:07 20 of Mr. Lindenbaum's questions?

06:57:08 21 A. No.

06:57:08 22 Q. At least one point during your

06:57:19 23 cross examination, Mr. Lindenbaum stated, "I'm

06:57:21 24 going to assume you agreed with my statement."

06:57:27 25 Do you recall that?

06:57:28 1 A. Yes.

06:57:29 2 Q. In your opinion, was Mr.

06:57:31 3 Lindenbaum's assumption warranted?

06:57:33 4 A. No.

06:57:34 5 Q. Do you recall that I instructed

06:57:42 6 you to answer each of Mr. Lindenbaum's

06:57:46 7 questions fully and to the best of your

06:57:47 8 ability?

06:57:48 9 A. Yes.

06:57:48 10 Q. Did you answer each of Mr.

06:57:53 11 Lindenbaum's questions fully and to the best of

06:57:55 12 your ability?

06:57:56 13 A. Yes. I carefully considered my

06:58:04 14 testimony in my declaration and considered that

06:58:09 15 testimony to be -- to best express my opinion

06:58:15 16 in my declaration.

06:58:16 17 Q. Is that why you answered many of

06:58:18 18 Mr. Lindenbaum's questions by reading portions

06:58:20 19 of your declaration?

06:58:21 20 A. Yes. Yes, I carefully considered

06:58:28 21 my testimony in my declaration and considered

06:58:30 22 that to be the best expression, in my opinion,

06:58:36 23 in the testimony.

06:58:41 24 MR. KAMHOLZ: Thank you. I have

06:58:42 25 no further questions.

06:58:48 1 MR. LINDENBAUM: I have no
06:58:48 2 redirect. Thank you, Mr. Dominguez.
06:58:51 3 THE WITNESS: Thank you. Good
06:58:53 4 night everyone.
06:59:01 5 COURT REPORTER: Counsel, a rough
06:59:03 6 draft?
06:59:04 7 MR. LINDENBAUM: Yes, please.
06:59:06 8 MR. KAMHOLZ: I don't need
06:59:08 9 anything.
07:02:39 10 COURT REPORTER: The transcript?
07:03:12 11 MR. KAMHOLZ: I don't need a
07:03:13 12 transcript.
07:03:14 13 COURT REPORTER: Okay. But you
07:03:15 14 got the realtime, so usually if you get
07:03:21 15 realtime services, I think, according to
07:03:23 16 my office, that means that you get a
07:03:25 17 transcript, but I will double-check with
07:03:29 18 them and maybe just charge you for the
07:03:31 19 realtime.
20 MR. KAMHOLZ: If you need to
21 charge me some base rate for that,
22 that's fine. I don't need any kind of
23 rush, though.
24 COURT REPORTER: I understand.
25 Okay.

07:03:33

1 (Whereupon the deposition
2 concluded at 7:03 p.m.)
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E R R A T A

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I, LEONEL DOMINGUEZ, do hereby certify

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that I have read the foregoing transcript of

5

my testimony, and further certify that it is

6

a true and accurate record of my testimony

7

(with the exception of the corrections

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listed below):

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Page Line

Correction

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Signed under the pains and penalties of

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perjury this day of ,

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LEONEL DOMINGUEZ

1 C E R T I F I C A T E

2

3 I, Michael O'Connor, Registered
4 Merit Reporter/Certified Realtime Reporter,
5 do hereby certify:

6 That LEONEL DOMINGUEZ, the witness
7 whose testimony is hereinbefore set forth,
8 was duly sworn by me and that such testimony
9 is a true and accurate record of my
10 stenotype notes taken in the foregoing
11 matter to the best of my knowledge, skill
12 and ability.

13 IN WITNESS WHEREOF, I have hereunto
14 set my hand and Notarial Seal this 18th day
15 of January 2024.

16

17

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19 Michael O'Connor
20 Michael O'Connor
21 Notary Public

22

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25 My Commission expires:

November 9, 2029