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4	EXAMINED BY		
5	Mr. Ferraro		6
6	* * * * *		
7	E X H I B I T S		
8	NUMBER		MARKED FOR ID
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1 LEONEL DOMINGUEZ,
2 having been first duly sworn, was examined and
3 testified as follows:

11:16:17 4 CROSS EXAMINATION

11:16:34 5 BY MR. FERRARO:

11:16:40 6 Q Good morning, Mr. Dominguez. Nice to meet
11:16:43 7 you.

11:16:43 8 A Good morning, Mr. Ferraro. Nice to meet
11:16:46 9 you.

11:16:46 10 Q Thank you. I was just going to introduce
11:16:49 11 myself. So I'm Vin Ferraro. I'm an attorney at
11:16:53 12 Kelley Drye. I represent Patent Owner Extremity
11:16:57 13 Medical. All right.

11:16:58 14 Could you please state your full name for
11:17:00 15 the record?

11:17:00 16 A Leonel Dominguez.

11:17:02 17 Q Okay. And Mr. Dominguez, you've been
11:17:06 18 deposed in this inter partes review? And by this
11:17:11 19 inter partes review, I mean IPR2023-00894. Is that
11:17:21 20 right?

11:17:21 21 A Yes, I've been deposed before.

11:17:23 22 Q And in this proceeding, correct?

11:17:25 23 A And in this proceeding, yes.

11:17:27 24 Q Okay. And when I refer to an IPR, I'm
11:17:33 25 referring to this proceeding. You understand that?

11:17:35 1 A Yes.

11:17:35 2 Q Okay. So I'll go over some preliminary
11:17:43 3 matters before we begin here. A lot of this will
11:17:46 4 probably sound familiar to you.

11:17:49 5 So you've just been administered an oath
11:17:54 6 pursuant to that oath. You're obligated to tell the
11:17:57 7 truth during this deposition. Do you understand
11:17:59 8 that?

11:17:59 9 A Yes, I do.

11:18:01 10 Q Okay. Are you taking any medication today
11:18:04 11 that would prevent you from understanding my
11:18:06 12 questions or answering my questions fully and
11:18:09 13 truthfully?

11:18:09 14 A No, I am not.

11:18:10 15 Q Have you been deposed since your last
11:18:15 16 deposition in this IPR?

11:18:17 17 A No.

11:18:18 18 Q All right. So we'll go so far some of the
11:18:27 19 ground rules here. As you probably remember, I will
11:18:30 20 be asking the questions during this deposition. And
11:18:32 21 my questions and your answers will be recorded by
11:18:34 22 the court reporter here, Sandra. The court reporter
11:18:38 23 is going to try to record everything that's said
11:18:41 24 during this deposition so we need to make sure that
11:18:44 25 we talk one at a time. I will endeavor to wait

11:18:48 1 until you complete your answers before asking the
 11:18:52 2 next question and I ask that you wait until I
 11:18:54 3 complete my question before you answer.

11:18:57 4 Does that all make sense?

11:18:58 5 A Yep, understood.

11:18:59 6 Q Okay. Also, as you probably remember, the
 11:19:06 7 court reporter is creating a written record here so
 11:19:09 8 we'll need verbal answers, no "uh-huhs" or head
 11:19:13 9 nods. Do you understand?

11:19:14 10 A Understood.

11:19:15 11 Q Okay. And if I ask a question that you do
 11:19:19 12 not understand, please let me know and I will try to
 11:19:21 13 clarify the question. Okay?

11:19:23 14 A Okay.

11:19:24 15 Q If you do answer the question, I will assume
 11:19:28 16 you understood the question. Is that fair?

11:19:31 17 A Yes.

11:19:31 18 Q All right. And just for the record, it
 11:19:39 19 should be indicated on the transcript, we're taking
 11:19:41 20 this deposition remotely by Zoom and if for some
 11:19:46 21 reason the connection is bad or you don't hear a
 11:19:48 22 full question, please let us know or let me know and
 11:19:51 23 we'll seek to fix the technical problem and make
 11:19:54 24 sure you hear and understand the question. Okay?

11:19:56 25 A Okay.

11:19:57 1 Q And if you at any time need a break, you
11:20:03 2 know, of course let me know. I just ask that if a
11:20:07 3 question's pending, you answer the question and
11:20:10 4 we'll take a break if needed. Okay?

11:20:12 5 A Okay.

11:20:13 6 Q All right. A couple more things here before
11:20:20 7 we get started. So Mr. Dominguez, you understand
11:20:22 8 you're not supposed to communicate with your
11:20:24 9 attorneys about the substance of your testimony
11:20:26 10 while I'm asking questions today?

11:20:29 11 A That's correct.

11:20:29 12 Q And do you have any papers or items in front
11:20:35 13 of you?

11:20:37 14 A I do have a hard copy printed, unmarked of
11:20:43 15 my declaration within arm's distance.

11:20:47 16 Q And which declaration is that? Is that the
11:20:50 17 second declaration, Exhibit --

11:20:51 18 A Yes.

11:20:52 19 Q -- 1018?

11:20:53 20 A Yes, the second declaration. That is, yes
11:20:57 21 the second declaration.

11:20:58 22 Q Okay. Is that the only thing in front of
11:21:00 23 you?

11:21:00 24 A Yes.

11:21:01 25 Q Okay. Then I'll just ask you about sort of

11:21:16 1 your setup here. Do you have anything opened on
11:21:18 2 your computer other than this Zoom software?

11:21:21 3 A Yes, I have -- I have the Zoom. I have -- I
11:21:26 4 have two monitors so usually the monitor on the
11:21:29 5 right is what I keep to view any PDFs that you may
11:21:34 6 send or to open it to see any, you know, electronic
11:21:37 7 files. And that's it. And you're on the other
11:21:41 8 screen.

11:21:41 9 Q Okay. So no other -- no Outlook, no other
11:21:46 10 software open, Word or internet or anything like
11:21:49 11 that?

11:21:49 12 A I think in the background I do have Outlook
11:21:51 13 running. I could shut it off.

11:21:54 14 Q Yeah, could you please?

11:21:55 15 A Okay. That's it. I've shut it off.

11:22:07 16 Q So the Zoom window is the only one that's
11:22:11 17 open on your computer right now?

11:22:13 18 A Yes.

11:22:14 19 Q Is there anyone else in the room with you?

11:22:16 20 A Nope. Just my dog. And she's sleeping so
11:22:24 21 she won't bother us.

11:22:25 22 Q All right. Let's get started now.

11:22:33 23 Did you do anything to prepare for this
11:22:35 24 deposition?

11:22:36 25 A Well, I've reviewed my declaration here, my

11:22:40 1 second declaration in preparation for our call

11:22:44 2 today.

11:22:44 3 Q Is that all you reviewed?

11:22:48 4 A I did review patent '166, you know,

11:22:58 5 Extremity Medical's patent '166, I did glance at

11:23:02 6 that again just to refresh my memory. Other than

11:23:07 7 that, that's basically all that I can remember

11:23:11 8 reviewing recently.

11:23:14 9 Q And for the record, when we say the '166

11:23:17 10 patent, we'll be referring to U.S. Patent Number

11:23:19 11 11,298,166. Do you understand that?

11:23:25 12 A Yes.

11:23:25 13 Q Did you meet with anyone or discuss with

11:23:33 14 anyone preparation for this deposition?

11:23:37 15 A Yes, I did.

11:23:38 16 Q And who was that?

11:23:40 17 A Mr. Scott Kamholz and Ms. Jennifer

11:23:55 18 Brinkerhoff.

11:23:56 19 Q And when did you do that?

11:23:57 20 A In the past two days.

11:23:59 21 Q Did you speak with anyone else to prepare

11:24:01 22 for the deposition?

11:24:02 23 A No, sir.

11:24:03 24 Q I'm going to transmit what's been previously

11:24:31 25 marked as Exhibit 2017 in this proceeding over to

11:24:39 1 you, Mr. Dominguez. Let me know once you've
11:24:43 2 received it and have it opened. I'm also going to
11:25:35 3 transmit your expert -- your second expert
11:25:38 4 declaration, which is Exhibit 1018.
11:25:38 5 (Document marked previously as
11:25:38 6 Exhibit 2017 was presented.)
11:25:38 7 (Document marked previously as
11:25:41 8 Exhibit 1018 was presented.)
11:25:41 9 A Okay.
11:25:43 10 Q Just let me know when you have both of those
11:25:45 11 -- you've received both and have them open. We'll
11:25:51 12 start with your second expert declaration.
11:26:08 13 A Okay, I have both documents open.
11:26:09 14 Q Please turn to -- in Exhibit 1018, so your
11:26:18 15 second declaration, please turn to paragraph 006.
11:26:34 16 A Yes, I am there.
11:26:35 17 Q Okay. And please read the second sentence
11:26:40 18 into the record.
11:26:41 19 A Paragraph 006, second sentence, "The
11:26:48 20 Figure 25C hole has a stepped longitudinal
11:26:52 21 cross-section (referred to as a widened bore 113)
11:27:01 22 and which is 'cut by shoulder 107.'" That's
11:27:10 23 Exhibit 2017, "of proximal reamer 100 depicted in
11:27:14 24 Figure 25A."
11:27:15 25 Q So you say that Figure 25C -- strike that.

11:27:23 1 You say that the Figure 25C hole has a
11:27:28 2 "stepped longitudinal cross-section" which is
11:27:32 3 referred to as the widened bore 113. Is that right?

11:27:44 4 A Yes. That is correct. As stated, 25C hole
11:27:49 5 has a stepped longitudinal cross-section referred to
11:27:52 6 as a widened bore 113 which is cut by shoulder of --
11:27:58 7 shoulder 107.

11:27:59 8 Q And did you cite to anything in the '299
11:28:03 9 patent, which is the Weiner patent, Exhibit 2017, to
11:28:08 10 support your statement that the widened bore 113 is
11:28:12 11 a "stepped longitudinal cross-section"?

11:28:24 12 A I don't recall addressing that in my
11:28:27 13 declaration.

11:28:27 14 Q We're going to give this a shot. I'm going
11:28:42 15 to ask you to draw on Figure 25C. We'll see how
11:28:46 16 this goes remotely. So I'm going to share my screen
11:28:50 17 and we'll go from there. So just give me one
11:28:54 18 second. Okay.

11:29:32 19 Can you see my screen, Mr. Dominguez?

11:29:34 20 A Yes, I can.

11:29:35 21 Q Now I think I have to give you remote
11:29:45 22 control here. So let's see that. Are you able to
11:29:47 23 move my mouse on my screen? Yes. Okay.

11:29:55 24 A Yeah. Can you see the mouse?

11:29:58 25 Q Yes.

11:29:59 1 A Okay.

11:29:59 2 Q I can see it. So I'm going to ask you to go
11:30:03 3 up to the top where it says "comment," like the top
11:30:09 4 toolbar.

11:30:11 5 A Okay.

11:30:13 6 Q Can you see it? It's the top, not the left.

11:30:22 7 A Oh, yes, I see it, comment.

11:30:25 8 Q So there should be a draw tools about five
11:30:30 9 over. And then go to pencil. Okay. So we'll give
11:30:43 10 this a shot. We'll see if it works.

11:30:46 11 So on Figure 25C, are you able to identify
11:30:55 12 what you are calling the stepped longitudinal
11:30:58 13 cross-section?

11:31:26 14 A I mean, it's -- everything included inside
11:31:31 15 this bore is stepped created by the reamer. So in
11:31:43 16 Weiner, he's referring to a hole cut by this
11:31:48 17 proximal reamer, meaning the cutting end of this
11:31:52 18 reamer, has a stepped longitudinal cross-section
11:31:56 19 meaning that 107 is a larger diameter than the rest
11:32:04 20 of the cutting end, say 105.

11:32:09 21 So in Figure 25C, the hole produced by this
11:32:14 22 reamer has a stepped longitudinal cross-section
11:32:18 23 referred to as a widened bore which is cut by
11:32:23 24 shoulder 107. In this example here, 107 is the
11:32:27 25 larger portion of the reamer, which represents the

11:32:30 1 larger diameter in the bore. That's the -- that's
11:32:37 2 the cut shoulder.

11:32:39 3 Q Right. But the -- let me just make sure I'm
11:32:43 4 understanding. The stepped longitudinal
11:32:49 5 cross-section that's being created by 107, are you
11:32:54 6 saying that's the entirety of the red line you drew
11:32:57 7 from essentially the tip of the bore to the end?

11:33:05 8 A Weiner refers to a cut hole by the proximal
11:33:08 9 reamer of 100 and this hole has a stepped
11:33:17 10 longitudinal cross-section --

11:33:17 11 Q Right.

11:33:17 12 A -- referred to as a widened bore. So what
11:33:20 13 he's referring to as a stepped longitudinal
11:33:23 14 cross-section represents this larger cross-section,
11:33:25 15 the widened bore at 113 which is produced by 107 in
11:33:31 16 his reamer.

11:33:33 17 Q Okay. So that makes more sense.

11:33:38 18 A Yes.

11:33:39 19 Q So can you -- so I would say that the red
11:33:44 20 line isn't accurately representing just the stepped
11:33:51 21 longitudinal cross-section. Would you agree? Well,
11:33:52 22 you moved it now. But the --

11:33:54 23 A Yeah.

11:33:54 24 Q So I just want you to identify just the
11:33:59 25 stepped longitudinal cross-section in 25C from the

11:34:03 1 -- you know, from one end to the other.

11:34:10 2 A So the stepped longitudinal cross-section is
11:34:13 3 cut by the shoulder 107 in Figure 25A and that cuts
11:34:27 4 the shoulder in Figure 25C. But it cuts the --
11:34:35 5 yeah, that cuts the -- it's cut by the shoulder 107.
11:34:43 6 It's cut -- the hole cut by the proximal reamer and
11:34:49 7 that is -- the hole in 25C has a stepped
11:34:52 8 longitudinal cross-section, which is the widened
11:34:54 9 bore 113, cut by the shoulder 107.

11:34:57 10 Q And so let me ask you this as I'm driving
11:35:03 11 the mouse now. Is the stepped longitudinal
11:35:08 12 cross-section from where the mouse -- does it cover
11:35:10 13 this line here where I moved the mouse, from this
11:35:16 14 end to this end?

11:35:18 15 A Yes, that describes the cut -- the widened
11:35:27 16 bore 113 cut by the proximal reamer shoulder 107.

11:35:41 17 Q And I'm going to take a screen grab of this
11:35:51 18 and make it an exhibit, Scott. And then I want to
11:35:55 19 erase this and we'll make one more drawing to this
11:35:59 20 figure. So once I make the screen grab, I'll send
11:36:08 21 it to the chat. I'm going to delete everything else
11:37:39 22 and we'll start from scratch now, Mr. Dominguez.

11:37:41 23 A Okay.

11:37:42 24 Q And what I'm going to -- go ahead.

11:37:44 25 A I was just saying that red mark on the -- in

11:37:48 1 the area just didn't -- you know, was all over the
11:37:51 2 place. It was very squiggly.

11:37:54 3 Q I know. We'll have to -- we'll have to deal
11:38:00 4 with it.

11:38:00 5 (Exhibit 2031 marked for
11:38:07 6 identification.)

11:38:07 7 BY MR. FERRARO:

11:38:15 8 Q So looking at -- sticking with Figure 25C,
11:38:20 9 can you draw for me where the stepped portion is of
11:38:25 10 the stepped longitudinal cross-section? Just what I
11:38:29 11 would suggest is just draw one line from the
11:38:31 12 beginning of the stepped portion to the end. I
11:38:36 13 think you still have control.

11:38:37 14 A I still have control. Okay. So we
11:38:40 15 established that 113 is -- the widened bore is 113
11:38:48 16 and that's where -- that's where the 113 line is
11:38:53 17 pointing to.

11:38:56 18 Q Yes.

11:39:08 19 A Can you repeat the question?

11:39:09 20 Q Yes. I asked you to draw where the stepped
11:39:14 21 portion is on the stepped longitudinal cross-section
11:39:20 22 or in the stepped longitudinal cross-section. Just
11:39:24 23 identify where the actual stepped portion is in 113
11:39:29 24 essentially.

11:39:32 25 A Well, technically 113 is a step relative to

11:39:36 1 the rest of the bore. So this is an enlarged --
11:39:41 2 this is what I'm calling a widened bore 113.

11:39:44 3 Q Yes.

11:39:45 4 A And this figure, the hole has a stepped
11:39:55 5 longitudinal cross-section. So the cross-section of
11:40:00 6 this hole starting with the widened bore at 113 is
11:40:11 7 cut with a stepped longitudinal cross-section by the
11:40:21 8 reamer -- by the geometry of the reamer at 107 and
11:40:24 9 it then travels into the hole in a -- it reduces the
11:40:31 10 diameter of the original outer bore and it reduces
11:40:36 11 as you go into the -- into the hole.

11:40:42 12 Q Right. So okay. Let me back up.

11:40:47 13 You testified earlier a couple minutes ago
11:40:51 14 that wide bore 113 from this portion to -- do you
11:41:00 15 follow my mouse?

11:41:01 16 A Yes.

11:41:01 17 Q Wide bore 113 from this portion to down here
11:41:06 18 where my mouse went is the stepped longitudinal
11:41:11 19 cross-section. Do I have that right?

11:41:16 20 A Yes, that's what I call so the widened bore
11:41:19 21 113.

11:41:20 22 Q So what I'm asking now is just where is --
11:41:24 23 within that piece that we just talked about, 113,
11:41:29 24 where is the stepped portion?

11:41:36 25 A That's in reference to the bore at 113, that

11:41:40 1 is stepped relative to the rest of the cavity.

11:41:44 2 Q Okay. I appreciate that. That 113 itself
11:41:50 3 maybe at the top is stepped from the -- stepped in
11:41:55 4 from maybe the wider hole at let's call that 112,
11:41:59 5 but 113 is in and of itself, as you testified, a
11:42:04 6 stepped longitudinal cross-section. And so is there
11:42:10 7 a step within that element 113?

11:42:16 8 A 113 is a widened bore that is a -- that
11:42:22 9 contains -- it's a stepped longitudinal
11:42:25 10 cross-section known as a -- referred to as a widened
11:42:28 11 bore. That's 113.

11:42:30 12 Q Okay. So 113 doesn't have a stepped
11:42:35 13 portion? It is the stepped longitudinal
11:42:39 14 cross-section, but within 113, there's no stepped
11:42:42 15 portion?

11:42:43 16 A Within 113, that is a diameter which is
11:42:51 17 created by the reamer in 25A, detail 107. 107 is a
11:42:58 18 diameter that cuts this widened bore 113.

11:43:10 19 Q Okay. Are you able to say that 113 though
11:43:18 20 itself doesn't have a stepped -- it's not stepped
11:43:21 21 itself? It's just one diameter from the beginning
11:43:27 22 to the end of just 113?

11:43:31 23 A Yeah, 113 is once again a stepped
11:43:37 24 longitudinal cross-section which is a widened bore
11:43:39 25 of the diameter created by the reamer at 107.

11:43:45 1 Q Okay. Does Exhibit 2017, which is what
11:44:00 2 we've been -- you know, what's on the screen, does
11:44:03 3 it call 113 a stepped longitudinal cross-section?

11:44:15 4 A Can you repeat the question?

11:44:20 5 Q Sure. Does the '299 patent, Exhibit 2017
11:44:26 6 which is on the screen, does it -- does this patent
11:44:32 7 call 113 a stepped longitudinal cross-section?

11:44:47 8 A I don't recall addressing that in my
11:44:57 9 declaration.

11:44:58 10 Q Well, in paragraph 6 you say Figure 25C has
11:45:08 11 a stepped longitudinal cross-section (referred to as
11:45:13 12 the widened bore 113).

11:45:17 13 So my question is does the actual patent
11:45:22 14 call 113 a stepped longitudinal cross-section?

11:45:28 15 A I don't recall that in my declaration. As I
11:45:32 16 read, Weiner refers to in quote, "the hole cut by
11:45:35 17 proximal reamer 100." It is in this patent. And he
11:45:43 18 also calls it which is "cut by shoulder 107." So
11:45:49 19 he's calling it a hole cut by proximal reamer 100
11:45:53 20 which cuts -- which is cut by the shoulder 107 which
11:45:57 21 is the tool -- the reamer tool used to cut that
11:46:02 22 hole.

11:46:02 23 So that hole I'm saying is a stepped
11:46:10 24 longitudinal cross-section because the -- because
11:46:12 25 the section varies, because the hole has a stepped

11:46:21 1 longitudinal cross-section as it enters the part and
 11:46:23 2 it creates an enlarged or widened bore at the
 11:46:26 3 entrance to -- at the entrance to the hole.

11:46:30 4 Q The phrase "stepped longitudinal
 11:46:35 5 cross-section," those are your words?

11:46:38 6 A Yes.

11:46:38 7 Q And you didn't cite to anywhere in the '299
 11:46:43 8 patent, the Weiner patent, that shows that those
 11:46:49 9 words came from the Weiner patent?

11:46:52 10 A I do not recall addressing that in my
 11:46:55 11 declaration.

11:46:55 12 Q Okay. Let's turn to paragraph 007 --

11:47:07 13 A Yes.

11:47:07 14 Q -- of your second declaration, which is
 11:47:10 15 Exhibit 1018. And you have a copy of that, right?

11:47:14 16 A Yes, I'm looking at it now.

11:47:16 17 Q Please read the first sentence of
 11:47:24 18 paragraph 007 into the record, please.

11:47:25 19 A Paragraph 007, "Further, a second hole (the
 11:47:34 20 distal hole 143) depicted in Figure 27C is very
 11:47:41 21 similar in shape to the proximal hole in that it
 11:47:44 22 includes a stepped longitudinal section created by
 11:47:50 23 the shoulder 137 of the distal reamer 130, but the
 11:47:55 24 entire structure is referred to a single structure
 11:47:57 25 or hole 143, Exhibit 2017."

11:48:06 1 Q In that sentence you just read, you say that
11:48:09 2 the hole 143 shown in Figure 27C has a stepped
11:48:17 3 longitudinal cross-section, correct?

11:48:26 4 A The second hole, the distal hole 143 is very
11:48:30 5 similar in shape to the proximal hole that includes
11:48:34 6 a stepped longitudinal cross-section created by
11:48:36 7 shoulder 137 of the distal reamer 130.

11:48:52 8 Q In paragraph 7, do you cite anywhere in the
11:48:55 9 '299 patent that supports the statement that you
11:48:59 10 just read, which is the hole has a "stepped
11:49:05 11 longitudinal cross-section"?

11:49:06 12 A I do not recall addressing that in my
11:49:25 13 declaration.

11:49:25 14 Q Is that a "no" or you don't recall?

11:49:33 15 A Can you repeat the question?

11:49:35 16 Q You said you didn't recall addressing that
11:49:38 17 in the declaration. Is that a "no" to the question
11:49:40 18 that I previously asked which is that you don't --
11:49:46 19 there's no -- let me back up.

11:49:49 20 You didn't cite to anywhere in the '299
11:49:53 21 patent to support the statement that hole 143
11:49:58 22 includes a stepped longitudinal cross-section?

11:50:03 23 A In this particular paragraph, I did not
11:50:07 24 quote anyone, so this is my opinion that this second
11:50:10 25 hole depicted in Figure 27C is very similar in shape

11:50:14 1 to the proximal hole in that it includes a stepped
11:50:18 2 longitudinal cross-section created by the shoulder
11:50:20 3 137 of the distal reamer but the entire structure is
11:50:23 4 referred to a single structure or hole 143.

11:50:35 5 Q Can you still see my screen?

11:50:36 6 A Yes.

11:50:37 7 Q Try this -- try this one more time here. Do
11:50:55 8 you still have remote control of my screen?

11:50:58 9 A Yes.

11:50:59 10 Q Similar to what you did for 250, for 270 can
11:51:08 11 you identify the stepped longitudinal cross-section?

11:51:13 12 A So in Figure 270, 143 refers to the distal
11:51:19 13 hole. So this is -- this is considered -- this is
11:51:34 14 considered the entire hole. And this section here
11:51:42 15 is being cut by 137. The geometry of the reamer at
11:51:47 16 137 creates this cavity at the distal end of this
11:51:55 17 entire hole.

11:51:57 18 Q So the line -- just to be clear, the
11:52:02 19 right-most part of that line you just drew, should
11:52:06 20 that be touching the top? And if it should, can you
11:52:12 21 connect that? See how it's like slightly -- so from
11:52:18 22 up there all the way to the top to the right?

11:52:22 23 A Well, 137 -- the feature 137 creates the
11:52:31 24 cavity -- this enlarged opening from here to here.

11:52:37 25 Q Okay. You went too far on the first one.

11:52:40 1 A Yeah, I went a little too far with my hand.

11:52:43 2 Q That's all I wanted to see. Thank you.

11:52:46 3 And similar question for 25C, within where
11:52:50 4 you just drew, is there a stepped portion or is that
11:52:57 5 the same diameter from the top to the bottom of that
11:53:01 6 line you drew in that space?

11:53:06 7 A I don't understand your question.

11:53:08 8 Q Does the diameter change in that -- in the
11:53:11 9 space where the line that you just -- that
11:53:15 10 represents the space that's showing the -- let me
11:53:21 11 back up.

11:53:22 12 Does the diameter change in the space where
11:53:25 13 your line is going from the left to the right in
11:53:29 14 that figure?

11:53:31 15 A I don't recall addressing that in my
11:53:33 16 declaration.

11:53:33 17 Q Looking at it now, do you know?

11:53:36 18 A I really don't know and don't recall it in
11:53:39 19 my declaration.

11:53:41 20 Q Well, sure. I understand. It's not in your
11:53:44 21 declaration. I'm just asking if you can look at it
11:53:47 22 now and if not, that's fine? Just "yes" or "no"
11:53:50 23 here.

11:53:52 24 A What I have stated is that this stepped
11:53:56 25 longitudinal cross-section is created by the

11:53:57 1 shoulder 137 in the reamer 130. So whatever that
11:54:03 2 geometry in the shoulder 137, that is what produces
11:54:06 3 the exact geometry at 143, at the bore in 143. So I
11:54:14 4 don't know and I do not recall addressing the
11:54:17 5 diameter of that bore in my declaration.

11:54:19 6 Q Does 137 in 27A, that component, does that
11:54:29 7 create the hole, the entire hole and it's just
11:54:35 8 emulating the shape of 137?

11:54:42 9 A What I've stated is that that stepped
11:54:48 10 longitudinal cross-section is created by the
11:54:50 11 shoulder, by shoulder 137 of the distal reamer, that
11:54:54 12 specific shoulder 137.

11:54:58 13 Q Okay. So 137, if I'm understanding you
11:55:01 14 correctly, only created the portion of the distal
11:55:08 15 hole that you've identified with the line in
11:55:13 16 Figure 27C, is that right?

11:55:22 17 A Yep, the stepped longitudinal cross-section
11:55:24 18 created by shoulder 137 of the distal reamer 130 in
11:55:31 19 — that structure is referred to a single structure
11:55:33 20 or hole 143, and that structure at 137 creates that
11:55:41 21 particular bore section of the hole 143.

11:55:45 22 Q Thank you. Let's turn to Exhibit — what's
11:56:17 23 been previously marked Exhibit 1019. I'm going to
11:56:21 24 stop sharing my screen here. And I will send over
11:56:24 25 to you Exhibit 1019.

11:56:24 1 (Document marked previously as
11:57:02 2 Exhibit 1019 was presented.)
11:57:02 3 BY MR. FERRARO:
11:57:02 4 Q Let me know when you've received
11:57:04 5 Exhibit 1019 and you have it open on your screen.
11:57:08 6 A Yes, I have it.
11:57:09 7 Q Please turn to column 5, lines -- well,
11:57:21 8 starting at line 21 and going through 24. Let me
11:57:28 9 know when you're there and have you had a chance
11:57:32 10 to --
11:57:32 11 A Column 5, line 21?
11:57:39 12 Q Yes.
11:57:40 13 A Yes, I see it.
11:57:41 14 Q Would you agree that element 27 discussed in
11:57:53 15 that portion of the '753 patent is referred to as a
11:58:01 16 cylindrical stepped down bore?
11:58:26 17 A I mean in patent '753, Jackson describes a
11:58:31 18 bone repair set screw in which "the bore 27
11:58:34 19 comprises of a first bore section 31, a second bore
11:58:38 20 section 32" delineated by shoulders 41, 42 in this
11:58:44 21 exhibit.
11:58:47 22 Q Okay. But on column 5, lines 21 and 22 --
11:59:02 23 well, read that into the record, please.
11:59:04 24 A "As seen in Figure 3, a cylindrical stepped
11:59:08 25 down bore 27 is formed in the set screw 1 and

11:59:12 1 extends axially into the set screw 1 from an upper
11:59:16 2 end 28 of the screw 1 towards a lower end 29
11:59:22 3 thereof. "

11:59:23 4 Q Okay. And in what you just read, is element
11:59:29 5 27 referred to as a cylindrical stepped down bore?

11:59:34 6 A Item 27 is referred to as a cylindrical
11:59:41 7 stepped down bore in this paragraph.

11:59:43 8 Q Would you agree that the cylindrical stepped
11:59:48 9 down bore 27 is part of the specific set screw shown
11:59:54 10 and described by Jackson -- by this Jackson
11:59:57 11 reference?

12:00:00 12 A Jackson describes a bone repair set screw in
12:00:27 13 which the "the bore 27 comprises a first bore
12:00:31 14 section 31, a second bore section 32." So bore 27
12:00:37 15 comprises of a first bore section 31, a second bore
12:00:42 16 section 32 which are delineated by shoulders 41 and
12:00:46 17 42. So Jackson is depicting a single bore with at
12:00:57 18 least one stepped longitudinal cross-section.

12:01:03 19 Q So that cylindrical stepped down bore, as
12:01:10 20 you just described it, it's being described in
12:01:14 21 Jackson to be used with the set screw disclosed in
12:01:18 22 Jackson. Would you agree with that?

12:01:21 23 A Yeah, but you know, Jackson's invention
12:01:24 24 happens to be a bone repair set screw. That's what
12:01:27 25 he calls it.

12:01:28 1 Q Okay. Thank you. I'm going to transmit
12:01:36 2 what's been previously marked Exhibit 1020 over to
12:01:43 3 you now and just let me know once you've received it
12:01:46 4 and have it open.

12:02:00 5 A I've got it.

12:02:00 6 (Document marked previously as
12:02:00 7 Exhibit 1020 was presented.)

12:02:00 8 Q Okay. Please turn to paragraph 33.

12:02:17 9 A I'm on paragraph 33.

12:02:20 10 Q And would you agree that element 230
12:02:30 11 discussed in paragraph 33 is referred to as "a
12:02:36 12 thru-bore"?

12:02:40 13 A Ensign in his patent ending with '147
12:02:54 14 describes an orthopedic plate having a plate body
12:02:57 15 300 with a thru-bore -- "thru-bore 230" that
12:03:01 16 includes central cavity diameter 350 delineated from
12:03:05 17 a smaller exit diameter 340 by bore stop 360 in his
12:03:11 18 patent.

12:03:13 19 Q Right. So thru-bore -- I'm sorry.

12:03:19 20 A I'm just saying this refers to Figure 3C.

12:03:22 21 Q Sure. But just to make this a little
12:03:26 22 simpler, 230 in paragraph 33 is referring to a
12:03:31 23 "thru-bore," correct?

12:03:36 24 A Yes, 230 is "the thru-bore." "Thru-bore
12:03:44 25 230" was how Ensign describes the thru-bore as 230.

12:03:48 1 Q And the thru-bore 230 is part of the
 12:03:55 2 specific bone plate shown and described by Ensign,
 12:03:58 3 is that right?
 12:03:59 4 A Yeah, it's an annotated Figure 3C which
 12:04:02 5 shows simply a cross-sectional view of the thru-bore
 12:04:06 6 230.
 12:04:07 7 Q Right. And which is to be used with the
 12:04:10 8 specific bone plate that Ensign's talking about
 12:04:14 9 really?
 12:04:15 10 A Yes. This is Ensign's orthopedic plate
 12:04:20 11 system.
 12:04:21 12 Q Okay. Go ahead and close that one.
 12:04:25 13 A Okay.
 12:04:26 14 Q I'm going to send you Exhibit 1021.
 12:04:26 15 (Document marked previously as
 12:04:32 16 Exhibit 1021 was presented.)
 12:04:32 17 BY MR. FERRARO:
 12:04:37 18 Q Let me know when you have that up on your
 12:04:39 19 screen please.
 12:04:48 20 A Yes, I have.
 12:04:49 21 Q Exhibit 1021 has been previously marked.
 12:04:52 22 It's the Branemark I believe is how you say that?
 12:04:54 23 A I'll take your word for it.
 12:04:56 24 Q Fair enough. I don't know that you should,
 12:04:59 25 but...

12:05:00 1 A Branemark.

12:05:02 2 Q Branemark.

12:05:03 3 A Pretty close. Let's just agree to that.

12:05:06 4 Q All right. I feel like Scott might know how

12:05:10 5 to say it. Okay. So turn to column 4, lines 44 --

12:05:17 6 sorry -- 44 to 46.

12:05:22 7 A Lines 44 in which column?

12:05:25 8 Q Column 4.

12:05:27 9 A Yes, I'm there. Column 4. Okay.

12:05:33 10 Q So in those lines, would you agree that what

12:05:39 11 is referenced there is a "inner through bore with a

12:05:43 12 first portion 4 prime in the first holding portion

12:05:48 13 and a second portion 5 prime in the second holding

12:05:53 14 portion 31"?

12:05:55 15 A Let me read that just to familiarize myself.

12:05:58 16 Let me read that paragraph to myself here.

12:06:01 17 Q Sure.

12:06:45 18 A Okay. Can you repeat the question?

12:06:49 19 Q Sure. Would you agree that in column 4,

12:06:58 20 lines 44 to 66, what is referenced there in that

12:07:08 21 excerpt is "inner through bore with a first portion

12:07:12 22 4 prime in the first holding portion and a second

12:07:17 23 portion 5 prime" -- I guess it's double prime,

12:07:21 24 excuse me -- "second holding portion 31 double

12:07:24 25 prime"?

12:07:25 1 A I mean, in patent '670, Branemark describes
12:07:29 2 an osseous implant device having a body 1 with a
12:07:33 3 first and second holding portions 21 double prime,
12:07:40 4 31 double prime and an inner through bore with a
12:07:43 5 first portion 4 double prime in this first holding
12:07:46 6 portion and the second portion 5 prime -- 5 double
12:07:50 7 prime in the second holding portion.

12:07:59 8 Q And would you agree that the described
12:08:06 9 "inner through bore" is part of the specific implant
12:08:10 10 device shown and described by Branemark -- the
12:08:14 11 Branemark reference?

12:08:15 12 A I mean, I am quoting Branemark's own words
12:08:19 13 that calls it "an inner through bore with a first
12:08:21 14 portion 4 double prime." So that's his -- that's
12:08:26 15 his -- the POSA's opinion on how he terms that. I
12:08:32 16 don't recall addressing that in my declaration as my
12:08:34 17 opinion, but it's Branemark's own words in the
12:08:38 18 patent.

12:08:40 19 Q Right. And he's describing the through bore
12:08:45 20 as it applies to his specific -- his being
12:08:50 21 Branemark's, implant device?

12:08:53 22 A Yes, that's my understanding.

12:08:55 23 Q Okay. We can put that to the side.

12:09:09 24 A Okay.

12:09:11 25 Q I'm going to transmit over to you

12:09:14 1 Exhibit 1024. It's been previously marked as 1024.

12:09:14 2 (Document marked previously as

12:09:20 3 Exhibit 1024 was presented.)

12:09:20 4 BY MR. FERRARO:

12:09:20 5 Q Just let me know when that's -- when you
12:09:22 6 have it and it's opened.

12:09:24 7 A Okay. I've got 1024, Mishra.

12:09:41 8 Q Yes. It's Mishra and it's Exhibit 1024.

12:09:46 9 Please turn to paragraph 97.

12:09:53 10 A Paragraph 97.

12:10:05 11 Q Yep.

12:10:19 12 A Okay.

12:10:19 13 Q Would you agree that in paragraph 97 of
12:10:24 14 Mishra, it says "The second bore 1315 and the third
12:10:30 15 bore 1320 may together be considered a" single --
12:10:35 16 "singled stepped cylindrical bore"?

12:10:41 17 A I don't recall addressing Mishra in my
12:10:52 18 declaration.

12:10:58 19 Q Do you have an opinion on it now?

12:11:15 20 A No, I don't recall addressing it in my
12:11:18 21 declaration.

12:11:18 22 Q Whether it's in your declaration or not, can
12:11:33 23 you agree that that -- what I quoted is an accurate
12:11:37 24 quote from Mishra?

12:11:39 25 A I mean, I see what you said in that

12:11:42 1 paragraph, but I don't recall addressing it in my
12:11:45 2 declaration.

12:12:00 3 Q We can move on. Let's close that one. I'm
12:12:09 4 going to send over to you Exhibit 1025.

12:12:09 5 (Document marked previously as
12:12:13 6 Exhibit 1025 was presented.)

12:12:13 7 BY MR. FERRARO:

12:12:17 8 Q Let me know when you've received it and have
12:12:19 9 it open.

12:12:21 10 A Okay. Yes, I have patent ending in '121
12:12:31 11 open.

12:12:32 12 Q Please turn to column 2, lines 9 to 11.

12:12:47 13 A Yes.

12:12:48 14 Q Would you agree that element 14 is referred
12:12:59 15 to as a stepped cylindrical bore?

12:13:03 16 A In Dr. Ray, Charles Ray's patent ending in
12:13:09 17 '121, surgical caliper, predates -- which predates
12:13:15 18 patent '166, the surgical calipers that Dr. Ray
12:13:18 19 describes includes a handle 12 having a stepped
12:13:23 20 cylindrical bore and stepped cylindrical bore 14 are
12:13:26 21 in quotes by Dr. Ray. Stepped cylindrical bore 14,
12:13:32 22 collar 20 of a shaft inserted in the bore and "rests
12:13:36 23 against a step of the bore 14" as shown in Figure 1
12:13:41 24 of his patent. These segments of stepped
12:13:46 25 cylindrical bores 14 annotated in blue and red in my

12:13:52 1 declaration.

12:13:53 2 Q I was just going to ask because you said
12:13:58 3 "stepped cylindrical bore" but it's not quoted in
12:14:03 4 obviously the '121 patent, right?

12:14:09 5 A Yes, but after -- in line 10, elongated
12:14:18 6 barrel-like handle 12 having a stepped cylindrical
12:14:21 7 bore 14.

12:14:23 8 Q Right, right. I was just saying there's no
12:14:25 9 quotes around stepped cylindrical bore?

12:14:27 10 A No, I was just quoting his example.

12:14:30 11 Q Understood. All that's just to say that
12:14:35 12 Ray, the '121 patent, describes element 14 as a
12:14:40 13 stepped cylindrical bore, right?

12:14:43 14 A Includes a handle 12 having a stepped
12:14:45 15 cylindrical bore.

12:14:49 16 Q And would you agree that the stepped
12:14:51 17 cylindrical bore 14 of the Ray patent is part of the
12:14:56 18 specific caliper shown and described by Ray?

12:15:05 19 A Yes, as Ray describes his surgical caliper,
12:15:08 20 he describes a handle, number 12, and this handle
12:15:13 21 has a stepped cylindrical bore 14. And it also
12:15:20 22 contains a collar of a shaft inserted into the bore
12:15:22 23 which rests against the step of the bore 14 as shown
12:15:27 24 in Figure 1. And so he is describing a stepped
12:15:31 25 cylindrical bore.

12:15:34 1 Q Right. And that's for his caliper?

12:15:37 2 A That is for his invention, correct.

12:15:39 3 Q Okay. We can put that to the side. I'm
12:15:46 4 going to send over to you what's been previously
12:15:49 5 marked Exhibit 1026.

12:15:49 6 (Document marked previously as
12:15:52 7 Exhibit 1026 was presented.)

12:15:52 8 BY MR. FERRARO:

12:15:57 9 Q Let me know when you've received it and have
12:15:59 10 it open.

12:16:00 11 A Okay, I've got it open.

12:16:11 12 Q What is the Brown reference describing, just
12:16:24 13 generally?

12:16:25 14 A Brown's invention is a quick disconnect
12:16:30 15 fluid coupling for a connection of fluid conduits
12:16:33 16 and incorporates automated -- automatically actuated
12:16:37 17 valves.

12:16:40 18 Q So the Brown reference is not related to
12:16:44 19 surgical implants, would you agree?

12:16:46 20 A Brown's reference is a clearly an industrial
12:16:50 21 item, but it goes to depict that even inventors in
12:16:57 22 the industrial space still consider single bores
12:17:00 23 with stepped longitudinal cross-sections as part of
12:17:04 24 their design geometry.

12:17:06 25 Q Sure. But Brown doesn't talk about surgical

12:17:09 1 implants?

12:17:11 2 A Nope, I don't recall addressing that he does
12:17:14 3 in my declaration. I describe -- I describe Brown
12:17:24 4 in his patent '770 as describing a fluid valve
12:17:29 5 coupling member 30 in which the stepped cylindrical
12:17:35 6 bore 34 includes stepped fluid passages 36 and 38
12:17:39 7 annotated in red and blue in my Figure 2 with
12:17:44 8 further enlarged portions 42 and 40. So he's
12:17:48 9 showing a stepped cylindrical bore as part of his
12:17:52 10 fluid passage design.

12:17:55 11 Q What would somebody use this valve for?

12:18:06 12 A I don't think I recall addressing that in my
12:18:09 13 declaration.

12:18:12 14 Q Do you know?

12:18:14 15 A I don't recall addressing that in my
12:18:16 16 declaration.

12:18:17 17 Q No, I don't think you did. I'm just asking
12:18:20 18 if you do know as you sit here today?

12:18:23 19 A Again, I'm trying to answer your question as
12:18:27 20 best I can with -- to the best of my ability, but I
12:18:30 21 don't recall addressing that in my declaration.

12:18:32 22 Q So you don't know as you sit here?

12:18:37 23 A I'm saying as I don't recall addressing it
12:18:41 24 in my declaration.

12:18:41 25 Q I think those are -- that's fair. I think

12:18:43 1 that's a different answer or that's an answer to a
12:18:46 2 different question. I understand you didn't address
12:18:49 3 it in your declaration. That's -- I think we all --
12:18:54 4 everyone on this call knows you didn't address it.

12:18:56 5 I just want to know if you actually know
12:18:59 6 what this valve would be used for? That's it, yes
12:19:07 7 or no?

12:19:07 8 A I added this valve in my declaration to
12:19:10 9 depict that -- an example of another inventor
12:19:14 10 includes a single bore with a stepped longitudinal
12:19:18 11 cross-section in a patent that predates '166, but I
12:19:21 12 do not recall addressing what the purpose of this
12:19:23 13 device is in my declaration.

12:19:25 14 Q Okay. So you don't know, that's fine. We
12:19:28 15 can move on.

12:19:34 16 Do you know if the Brown reference relates
12:19:36 17 to bone fixation systems?

12:19:39 18 A I don't recall addressing that in my
12:19:41 19 declaration.

12:19:44 20 Q And does the Brown reference relate to
12:19:47 21 surgical screws used to compress bones?

12:19:50 22 A I don't recall addressing that in my
12:19:52 23 declaration.

12:19:52 24 Q If it had, if the Brown reference did
12:19:59 25 disclose or discuss that, is it fair to assume you

12:20:03 1 would have mentioned it in your declaration?

12:20:08 2 A I don't recall addressing that in my
12:20:10 3 declaration.

12:20:12 4 Q Okay. That's a very different -- that's an
12:20:15 5 answer to a very different question, but that's
12:20:18 6 fine. So let's turn to column 3, lines 59 to 68.

12:20:32 7 A Column 3, lines 60 -- are we still talking
12:20:38 8 about Brown?

12:20:39 9 Q Yes, we are.

12:20:40 10 A Which paragraph?

12:20:41 11 Q It's -- well, they're not numbered. The
12:20:45 12 paragraphs aren't numbered, but it's column 3, lines
12:20:49 13 -- starting at line 59.

12:20:51 14 A Okay.

12:20:52 15 Q And going to 68 is where we're going to
12:20:55 16 cover.

12:20:58 17 A Yes, I see that.

12:21:00 18 Q Okay. Would you agree that element 34,
12:21:06 19 which is referred -- which is discussed in that
12:21:10 20 section or excerpt of Brown refers -- is referred to
12:21:16 21 as a stepped cylindrical bore?

12:21:20 22 A Yeah, Brown in patent '770 describes fluid
12:21:25 23 valve coupling member 30 in which a "stepped
12:21:29 24 cylindrical bore 34 includes stepped fluid passages
12:21:32 25 portions 36 and 38." So these are annotated in red

12:21:39 1 and blue. So he describes the stepped cylindrical
12:21:41 2 bore 34. So he is describing stepped cylindrical
12:21:48 3 bore item 34.

12:21:50 4 Q Okay. And would you agree that the stepped
12:21:53 5 cylindrical bore 34 is part of the specific fluid
12:21:58 6 valve coupling shown and described by the Brown
12:22:01 7 reference?

12:22:03 8 A Yeah, the stepped cylindrical bore 34
12:22:07 9 includes the fluid passage portions of 36 and 38
12:22:13 10 within the further enlarged portion 42 and 40.

12:22:22 11 Q So the stepped cylindrical bore 34, it's
12:22:27 12 being described in connection with the specific
12:22:31 13 fluid valve that Brown is inventing here?

12:22:37 14 A Yeah, the stepped cylindrical bore 34
12:22:39 15 includes stepped fluid passages portion 36 and 38.
12:22:48 16 So once again, Brown is depicting a single bore with
12:22:51 17 a stepped longitudinal cross-section.

12:22:55 18 Q That's -- yeah. And that's to be used with
12:22:58 19 his fluid valve system, correct?

12:23:01 20 A That's how he's described his invention of a
12:23:03 21 fluid valve coupling system.

12:23:06 22 Q Okay. We can put the Brown reference to the
12:23:11 23 side or you can close it. I'm going to transmit
12:23:16 24 over to you -- well, first let me stop here. We've
12:23:20 25 been going probably for about an hour. Happy to

12:23:23 1 take a break. I'm happy to keep going. If you want
12:23:25 2 to just keep moving along, we can do that.

12:23:29 3 A I'm okay with moving it along a little
12:23:32 4 further.

12:23:32 5 Q Okay. Yeah, let's do that. You're on the
12:23:36 6 East Coast?

12:23:36 7 A Yes, I am.

12:23:37 8 Q So at some point we'll probably all need
12:23:41 9 lunch. I know the West Coast people probably just
12:23:44 10 ate breakfast, but we'll talk about that. Okay. So
12:23:49 11 I'm sending over Exhibit 1027.

12:23:49 12 (Document marked previously as
12:23:52 13 Exhibit 1027 was presented.)

12:23:52 14 BY MR. FERRARO:

12:23:52 15 Q Let me know when you've received it and have
12:23:54 16 it open.

12:24:12 17 A Okay, I've got Staev patent ending in '024
12:24:19 18 open.

12:24:19 19 Q Okay. And that's been previously marked
12:24:25 20 Exhibit 1027. Can you tell me what the Staev
12:24:30 21 reference is describing generally?

12:24:32 22 A Yeah, generally Staev's patent ending in
12:24:36 23 '024 describes a housing for a pneumatic shooting
12:24:41 24 device breech block in which "the cylindrical bore
12:24:45 25 in housing 1 is a step shape and has three portions

12:24:49 1 11, 12, 13 with different diameters" in his

12:24:58 2 invention of a shooting drive breech block.

12:25:01 3 Q So to paraphrase, it's describing a breech
12:25:10 4 block for a pneumatic shooting device. Does that
12:25:12 5 sound right?

12:25:13 6 A Yeah, that's fair.

12:25:14 7 Q Do you know what a breech block is?

12:25:16 8 A I'm not a -- I'm not a gun knowledgeable
12:25:21 9 person, but I'm drawing my attention, since he's
12:25:26 10 calling it a pneumatic shooting device, a pneumatic
12:25:30 11 shooting device breech, that it has to do something
12:25:33 12 with guns or rifles, things of that nature.

12:25:36 13 Q Do you know what a breech block would do for
12:25:38 14 that type of device?

12:25:40 15 A I don't recall addressing that in my
12:25:42 16 declaration.

12:25:43 17 Q But you did -- you did discuss Staev in your
12:25:49 18 declaration, right?

12:25:50 19 A Yes, I listed Staev as an example of a
12:25:54 20 cylindrical bore of having a step-shaped geometry.

12:26:00 21 Q And so you listed it, you discussed it, it's
12:26:05 22 fair to assume that -- not even assume -- you did
12:26:08 23 review Staev, right?

12:26:10 24 A Yes. I did review Staev in the context that
12:26:15 25 we're describing here as it is a cylindrical bore in

12:26:21 1 housing 1, it has a step-shaped and has three
12:26:26 2 portions 11, 12, 13 which constitute a single bore
12:26:31 3 with a stepped longitudinal cross-section geometry.

12:26:35 4 Q Okay. And so you reviewed it, but you're
12:26:41 5 not sure what a breech block for a pneumatic
12:26:46 6 shooting device is, is that right?

12:26:48 7 A I don't recall addressing that in my
12:26:50 8 declaration.

12:26:51 9 Q Can you explain to me what you mean by you
12:27:04 10 didn't discuss it in your declaration in the context
12:27:12 11 of a response to my question?

12:27:19 12 A I certainly did not recall addressing what
12:27:23 13 the purpose of a breech block shooting device is in
12:27:26 14 my declaration. I don't recall addressing what its
12:27:30 15 purpose is in my declaration.

12:27:32 16 Q Okay. So you don't recall addressing what a
12:27:36 17 breech block is in your declaration. Is that
12:27:39 18 accurate?

12:27:40 19 A I mean, I used the term that Staev uses to
12:27:43 20 describe his invention of a housing for a pneumatic
12:27:47 21 shooting device breech block. So I did use Staev's
12:27:51 22 own description of what his invention is in this
12:27:55 23 particular area. It's a housing for a pneumatic
12:27:58 24 shooting device breech block. But what I am
12:28:02 25 opinionating on is that this device contains a

12:28:07 1 cylindrical bore in the housing and is stepped and
12:28:10 2 has three portions 11, 12, and 13 which represents a
12:28:17 3 stepped longitudinal cross-section within a single
12:28:18 4 bore.

12:28:21 5 Q Okay. Can you turn to figure -- actually
12:28:28 6 before we get there, I'll just ask a few more
12:28:31 7 questions on this point.

12:28:35 8 Does the Staev reference relate to surgical
12:28:39 9 implants?

12:28:40 10 A I don't recall addressing that it does in my
12:28:43 11 declaration.

12:28:43 12 Q And does the Staev reference relate to bone
12:28:48 13 fixation systems?

12:28:49 14 A I don't recall addressing that in my
12:28:51 15 declaration.

12:28:51 16 Q And does the Staev reference relate to
12:28:58 17 surgical screws used to compress bones?

12:29:01 18 A I don't recall addressing that in my
12:29:03 19 declaration.

12:29:04 20 Q If Staev had disclosed or discussed surgical
12:29:10 21 screws used to compress bones, would you have
12:29:15 22 discussed it in your declaration?

12:29:21 23 A I don't recall addressing that in my
12:29:24 24 declaration.

12:29:24 25 Q Did you read Staev?

12:29:33 1 A Yeah, I looked through his patent,
12:29:36 2 particularly the figures that I'm addressing in my
12:29:39 3 declaration, Figure 1, which pertains to the, you
12:29:44 4 know, the single bore with stepped longitudinal
12:29:48 5 cross-sections, elements 1, the housing, and the
12:29:50 6 three portions of those stepped shapes 11, 12, 13.

12:29:54 7 Q Right. And that relate to a breech block in
12:29:58 8 a shooting device, not a fixation system?

12:30:02 9 A It relates to his invention as described in
12:30:05 10 Figure 1 of his patent. And he is describing it as
12:30:10 11 a housing for pneumatic shooting device breech
12:30:13 12 block.

12:30:13 13 Q Okay. Let's turn to Figure 1.

12:30:23 14 A Uh-huh. Yes, I'm there.

12:30:33 15 Q Repeat again, please, what the stepped
12:30:40 16 shaped cylindrical bore of Staev consists of.

12:30:45 17 A So according to Staev "the cylindrical bore
12:30:48 18 in the housing 1" -- double quotes there -- housing
12:30:54 19 1 is the -- is step-shaped "step-shaped." So his
12:30:59 20 cylindrical bore in housing 1 is "step-shaped" and
12:31:02 21 has three portions, 11, 12, and 13 with different
12:31:07 22 diameters.

12:31:11 23 Q Okay. Let's start with 11. What is 11
12:31:21 24 pointing to? Can you tell?

12:31:23 25 A 11 is one of the three different diameters

12:31:31 1 within his housing. So 11 is towards the left
12:31:36 2 there, the left of the housing in Figure 1. 11 is
12:31:41 3 the first portion of a certain diameter, appears to
12:31:49 4 be the smallest diameter, and then that enters into
12:31:52 5 12 which is a larger diameter and then enters into
12:31:56 6 13 which is yet another larger diameter. So there's
12:32:00 7 three portions, 11, 12, and 13 with different
12:32:03 8 diameters within housing 1.

12:32:08 9 Q I'm actually not seeing 12. Can you
12:32:15 10 characterize where 12 is being pointed to?

12:32:18 11 A 12 --

12:32:24 12 Q Maybe we have to go to --

12:32:25 13 A It's Figure 2. Yeah, 12.

12:32:27 14 Q My apologies. Let's look at Figure 2.

12:32:30 15 A Yeah.

12:32:31 16 Q Oh, now that I see them all, so Figure 11 is
12:32:35 17 the diameter of what exactly?

12:32:37 18 A Figure 11 is the diameter of the first -- of
12:32:45 19 the first cylindrical bore in housing 1. So that --
12:32:51 20 so that Figure 11 is pointing towards -- the
12:32:55 21 smallest diameter towards the bottom of Figure 2,
12:32:58 22 that's the opening to the bore at -- Figure 11 is a
12:33:04 23 small bore entering into housing 1 and that is a
12:33:08 24 hole or a bore that enters. And then it -- until it
12:33:12 25 reaches portion 12 which is an enlarger -- a larger

12:33:17 1 bore or diameter inside figure -- inside housing 1
12:33:22 2 and that leads into 13 which is yet a larger
12:33:28 3 diameter than all of Figures 11 and 12 towards the
12:33:32 4 top of Figure 2. And that's all within housing 1.

12:33:35 5 So this housing has three portions, 11, 12,
12:33:41 6 and 13, with different diameters. So this depicts
12:33:49 7 -- in Staev depicts a single bore with a stepped
12:33:53 8 longitudinal cross-section having -- basically
12:33:55 9 you're having three longitudinal cross-sections
12:33:58 10 within this particular single bore.

12:34:15 11 Q If you could flip back to your declaration,
12:34:20 12 your second declaration, which is Exhibit 1018.

12:34:24 13 A Yes.

12:34:25 14 Q In paragraph 15, the figures shown, the
12:34:32 15 annotated Figure 1 -- actually I think that's
12:34:35 16 probably annotated Figure 2. Oh, no. You added it
12:34:40 17 from Figure 2. Okay.

12:34:42 18 You didn't identify what the bore was for
12:34:45 19 11. In other words, you didn't annotate it for 11,
12:34:50 20 right?

12:34:51 21 A I don't recall addressing that in my
12:34:57 22 declaration. I do recall -- I do list -- I do list
12:35:02 23 -- the annotation for 11 as shown in Figure 1 does
12:35:06 24 show 11 with a line pointing towards the -- a small
12:35:12 25 bore in housing 1.

12:35:16 1 Q But it's not annotated, right? Element 11
12:35:28 2 is not annotated in the figure? That's all I'm
12:35:31 3 asking.

12:35:31 4 A Well, in Figure 1 here in my declaration,
12:35:35 5 item 11 is annotated with a line showing that first
12:35:41 6 smaller bore in the left side of Figure 1, in the
12:35:45 7 left side of the housing. So 11 --

12:35:49 8 Q Did you say it's annotated in that figure?

12:35:51 9 A Yeah, 11 is annotated. 12, 13 in housing 1
12:35:56 10 are also annotated.

12:35:58 11 Q How is element 11 annotated in that figure?

12:36:02 12 A It's pointing towards the inner bore.

12:36:11 13 Q I guess what I'm asking you is did you
12:36:15 14 annotate Figure 1 to identify 11?

12:36:21 15 A No, Figure 1, annotation 11 comes directly
12:36:26 16 from the inventor Staev.

12:36:28 17 Q Yeah. You didn't color code 11?

12:36:30 18 A I did not color code 11.

12:36:32 19 Q Okay. All right. So let's turn to
12:36:37 20 column 2, lines 23 to 24 of Staev.

12:36:46 21 A Column 2, lines -- did you say column 2?

12:36:51 22 Q Yes, column 2, lines 23 and 24.

12:36:55 23 A Okay.

12:36:56 24 Q Would you agree that Staev is referring to a
12:37:03 25 "step-shaped cylindrical bore" that is formed in the

12:37:09 1 housing 1 of the breech block?

12:37:24 2 A Yes, Staev is describing a cylindrical bore
12:37:27 3 in housing 1 is step-shaped and has three portions
12:37:31 4 to it, 11, 12, 13 of different diameters.

12:37:36 5 Q And would you agree that the step-shaped
12:37:39 6 cylindrical bore of Staev is part of the specific
12:37:42 7 breech block shown and described by Staev?

12:37:47 8 A He's describing it as part of housing 1 in
12:37:51 9 his breech block, so he's describing as part of the
12:37:54 10 housing which he calls item 1.

12:37:58 11 Q Correct. But he's describing the
12:38:03 12 step-shaped cylindrical bore in connection with his
12:38:06 13 breech block, correct?

12:38:11 14 A Staev -- Staev's design patent here or
12:38:15 15 patent is describing a housing 1 which contains
12:38:18 16 these step-shaped cylindrical bores 11, 12 and 13
12:38:24 17 within the housing that he is calling his shooting
12:38:29 18 device breech block.

12:38:30 19 Q Okay. You can put Staev aside.

12:38:34 20 A Okay.

12:38:35 21 Q I'm going to send over to you what's been
12:38:43 22 previously marked Exhibit 1006. It's the Brumfield
12:38:50 23 reference. Just let me know when you've received it
12:38:54 24 and have it open.

12:38:55 25 ///

12:38:55 1 (Document marked previously as
12:39:03 2 Exhibit 1006 was presented.)
12:39:03 3 A Okay, I've got it.
12:39:05 4 Q And turn to column 6, lines 41 to 47.
12:39:20 5 A Column 4, lines 41 through 47.
12:39:25 6 Q Yes. Can you actually read that -- once you
12:39:38 7 get there, can you read that excerpt into the
12:39:41 8 record? It starts with on line 41, "A hole" and it
12:39:52 9 ends with -- on line 47 with the number 50.
12:39:58 10 A Okay. "A hole in the femoral head and neck
12:40:03 11 is prepared to accept lag screw 50 with a step-drill
12:40:09 12 -- "'step drill' or 'step-reamer' containing two
12:40:14 13 diameters" of a smaller diameter -- pardon --
12:40:19 14 "containing two diameters: a smaller diameter at its
12:40:23 15 tip corresponding to the root diameter of the lag
12:40:27 16 screw thread and a large diameter which equals to
12:40:32 17 the diameter of the smooth portion of the lag screw
12:40:35 18 50."
12:40:40 19 Q Would you agree that Brumfield is referring
12:40:43 20 to a specific hole that is prepared in the femoral
12:40:48 21 head and neck using a "step-drill or step-reamer"
12:40:53 22 and that that hole contains two different sized
12:40:56 23 diameters?
12:40:57 24 A Brumfield depicts a single bore with a
12:41:02 25 stepped longitudinal cross-section and he describes

12:41:03 1 a hole that is formed in bone using a step-drill or
12:41:06 2 a step-reamer which contains two diameters, a
12:41:10 3 smaller diameter at the tip corresponding to the
12:41:13 4 root diameter of the lag screw thread and a larger
12:41:16 5 dime which equals the diameter of the smooth portion
12:41:19 6 of the lag screw in his patent.

12:41:24 7 Q And would you agree that the specific hole
12:41:28 8 quote-unquote described in Brumfield is created
12:41:31 9 using a specific tool, namely a step-tool or a
12:41:35 10 step-reamer?

12:41:35 11 A That's how Brumfield has described it.

12:41:45 12 Q And would you agree that this specific hole
12:41:48 13 described in Brumfield is created so Brumfield's lag
12:41:52 14 screw 50 can be inserted into the femur bone?

12:42:00 15 A Brumfield describes a single void having
12:42:03 16 abutting cylindrical portions of different diameters
12:42:06 17 as a hole. And he is using that tool to create a --
12:42:12 18 the single void having abutting cylindrical portions
12:42:16 19 of different diameters that he calls a hole.

12:42:22 20 Q Right. He's creating a specific hole for a
12:42:27 21 lag screw 50. Would you agree?

12:42:30 22 A Yes, that's how Brumfield describes it, that
12:42:33 23 he's creating -- he's using a step-drill or
12:42:37 24 step-reamer to create two diameters of differing
12:42:42 25 diameters that correspond to the diameters of his

12:42:44 1 lag screw thread so that the two larger diameters
 12:42:50 2 equal to the diameter of the smooth portion of the
 12:42:52 3 lag screw. So Brumfield discloses he's using a
 12:42:55 4 stepped reamer or step-drill to create two diameters
 12:42:59 5 that match the diameters of his lag screw.

12:43:06 6 Q Okay. You can put Brumfield to the side for
 12:43:08 7 now.

12:43:09 8 A Okay. I'm going to send over what's been
 12:43:17 9 previously marked Exhibit 1028.

12:43:17 10 (Document marked previously as
 12:43:20 11 Exhibit 1028 was presented.)

12:43:20 12 BY MR. FERRARO:

12:43:22 13 Q It's the Laps reference. I'm going to send
 12:43:25 14 that now. Just let me know once you've received it
 12:43:28 15 and have it open.

12:43:41 16 A Okay, I've got it.

12:43:42 17 Q What's the Laps reference generally
 12:43:50 18 describing?

12:43:52 19 A Laps is describing a counterbore and he
 12:43:59 20 depicts a bore and a counterbore as a single
 12:44:01 21 structure in his invention. Laps discloses a sensor
 12:44:05 22 assembly with a housing in which the bore 16
 12:44:09 23 includes a counterbore 18.

12:44:17 24 Q Do you know what the sensor assembly is used
 12:44:21 25 for?

12:44:22 1 A I don't recall addressing that in my
 12:44:25 2 declaration.
 12:44:26 3 Q Did you review the Laps reference in
 12:44:39 4 connection with preparing the second declaration?
 12:44:42 5 A Yes, I have.
 12:44:42 6 Q And do you recall what the sensor assembly
 12:44:55 7 in Laps is used for?
 12:44:57 8 A No, I don't recall addressing that in my
 12:45:00 9 declaration. I addressed Laps as a disclosure to
 12:45:05 10 show a housing with bore that includes a
 12:45:09 11 counterbore.
 12:45:12 12 Q Correct. But do you know what the sensor
 12:45:17 13 assembly in Laps is used for?
 12:45:21 14 A No.
 12:45:21 15 Q Even in what industry it's used for?
 12:45:24 16 A I don't recall addressing that in my
 12:45:26 17 declaration.
 12:45:27 18 Q Yeah, I don't think you did. I think you
 12:45:32 19 have all one sentence here.
 12:45:34 20 The question is do you know as you sit here
 12:45:36 21 now what the Laps assembly is used for?
 12:45:42 22 A Yeah, I don't recall addressing that in my
 12:45:46 23 declaration.
 12:45:47 24 Q Does the Laps reference relate to surgical
 12:46:07 25 implants?

12:46:09 1 A I don't recall addressing that in my
12:46:11 2 declaration.

12:46:12 3 Q And does the Laps reference relate to bone
12:46:17 4 fixation systems?

12:46:18 5 A I don't recall addressing that in my
12:46:21 6 declaration.

12:46:21 7 Q And does the Laps reference relate to
12:46:27 8 surgical screws used to compress bones?

12:46:29 9 A I don't recall addressing that in my
12:46:32 10 declaration.

12:46:32 11 Q If the Laps reference did disclose or relate
12:46:44 12 to surgical screws used to compress bones, would you
12:46:51 13 have included it in your declaration?

12:46:57 14 A I don't recall addressing that in my
12:46:59 15 declaration.

12:47:03 16 Q Let's turn to paragraph 33 of the Laps
12:47:27 17 reference.

12:47:37 18 A Okay, I'm there.

12:47:37 19 Q I am not. Would you agree with me that
12:47:56 20 element 16 as discussed in paragraph 33 refers to --
12:48:04 21 is referred to as a bore?

12:48:14 22 A Laps discloses in his sensor assembly with a
12:48:18 23 housing in which the bore -- in quotes bore -- "the
12:48:22 24 bore 16 includes a counterbore 18." So bore -- he
12:48:27 25 describes 16 as a bore and it includes a

12:48:31 1 counterbore, element 18.

12:48:33 2 Q Would you agree that the bore 16 is part of
12:48:42 3 a specific housing of the sensor assembly shown and
12:48:46 4 described by Laps?

12:48:54 5 A Yeah, Laps is disclosing a sensor assembly
12:48:57 6 with a housing that contains bore 16 and includes
12:49:01 7 bore 18. So his housing contains bore 16 and
12:49:05 8 includes bore 18 in his housing.

12:49:07 9 Q Right. So the bore 16 is described in
12:49:13 10 connection with the sensor assembly housing of Laps?

12:49:20 11 A It's related to a sensor assembly with the
12:49:25 12 housing in which the housing contains bore 16 and
12:49:29 13 includes bore -- counterbore 18.

12:49:31 14 Q Okay. You can set Laps aside.

12:49:45 15 (Short recess.)

12:59:44 16 BY MR. FERRARO:

12:59:59 17 Q So I think we were finishing up with Laps,
13:00:03 18 Mr. Dominguez.

13:00:05 19 A Yep, that's correct.

13:00:06 20 Q Okay. So let's -- I'm going to send over
13:00:11 21 Martinez which is previously marked Exhibit 1029.

13:00:17 22 A Uh-huh, okay.

13:00:18 23 Q So let me when you've received it and have
13:00:21 24 it open.

13:00:23 25 ///

13:00:23 1 (Document marked previously as
13:00:33 2 Exhibit 1029 was presented.)
13:00:33 3 THE WITNESS: Okay, I've it open.
13:00:34 4 BY MR. FERRARO:
13:00:35 5 Q Turn to column 3, lines 61 to 64.
13:00:47 6 A Yes, I'm there.
13:00:49 7 Q Would you agree that in this excerpt of
13:00:55 8 Martinez, that element 56 is referred to as "a
13:01:01 9 bore"?
13:01:04 10 A Yes, Martinez in his patent '234 describes a
13:01:10 11 surgical cutting apparatus in which the bore 56 has
13:01:15 12 a counterbore 64." And so bore is 56 and
13:01:20 13 counterbore is 64 in his figure.
13:01:23 14 Q And would you agree that the bore 56 is part
13:01:29 15 of the specific surgical cutting instrument shown
13:01:32 16 and described by Martinez?
13:01:40 17 A Yeah, Martinez describes a surgical cutting
13:01:47 18 apparatus which contains bore 56 and counterbore 64
13:01:52 19 in his apparatus.
13:01:52 20 Q Right. So bore 56 is described in
13:01:55 21 connection with the cutting device or cutting
13:01:58 22 instrument of Martinez?
13:02:00 23 A That's how he describes it, yes.
13:02:02 24 Q Okay. You can set Martinez aside or close
13:02:07 25 it. And I will send over the next exhibit which is

13:02:16 1 Zang and it's previously marked Exhibit 1030.

13:02:16 2 (Document marked previously as

13:02:20 3 Exhibit 1030 was presented.)

13:02:20 4 BY MR. FERRARO:

13:02:33 5 Q Just let me know once you have it and open

13:02:35 6 it.

13:02:35 7 A I have it and I have it opened.

13:02:37 8 Q Turn to column 4, line 39.

13:03:05 9 A Okay.

13:03:14 10 Q Would you agree that element 28 is referred

13:03:16 11 to as "a bore"?

13:03:20 12 A Yeah, in Zang, he depicts and discloses --

13:03:24 13 in patent '843, he discloses a bone anchor for which

13:03:28 14 a "bore that includes a counterbore" is formed in

13:03:34 15 his -- in his patent. Preferably he says bore 28

13:03:38 16 and counterbore 30 are drilled by a single tool.

13:03:45 17 Q Right. So element 28 is bore -- is a bore?

13:03:53 18 Sorry.

13:03:53 19 A Yes, he describes a bore that includes a

13:03:56 20 counterbore in his figure.

13:04:00 21 Q And would you agree that bore 28 is the

13:04:03 22 specific void created in a bone shown and described

13:04:07 23 by Zang?

13:04:09 24 A Bore 28 is a hole or a bore that is -- that

13:04:15 25 includes a counterbore and it's drilled by a single

13:04:21 1 tool creating that bore.

13:04:22 2 Q Right. So bore 28 was created in connection
13:04:29 3 with a tool described by Zang, right?

13:04:41 4 A He describes a bone anchor for which a bore
13:04:45 5 includes a counterbore and preferably bore 28 and
13:04:50 6 counterbore 30 are drilled by a single tool to
13:04:54 7 create that bore and counterbore.

13:04:56 8 Q Right. To be able to use a suture or anchor
13:05:01 9 in connection with the -- with that bore, is that
13:05:08 10 right?

13:05:08 11 A Zang's invention has to do with bone anchor,
13:05:13 12 so I don't know -- I don't recall addressing
13:05:17 13 anything in my declaration concerning suture.

13:05:21 14 Q Yeah. Right. So anchor, let's say anchor.
13:05:33 15 So the bore -- the bore 28 is created to receive the
13:05:42 16 anchor as described in Zang, is that right?

13:05:47 17 A Zang is disclosing a bone anchor for which a
13:05:52 18 -- for which a bore that includes a counterbore is
13:05:54 19 formed and it's to create preferably bores 28 and
13:05:59 20 counterbore 30 which are drilled by a single tool.

13:06:03 21 Q Yeah. And so the bore 50 -- I'm sorry.

13:06:13 22 The bore 28, it's described in connection
13:06:17 23 with receiving the anchor disclosed in Zang?

13:06:27 24 A Yeah, bore 28 and counterbore 30 are drilled
13:06:31 25 by a single tool. And so Zang is depicting a bore

13:06:35 1 and a counterbore as a single structure which is
 13:06:38 2 created by or drilled by a single tool to create
 13:06:42 3 bore 28 and counterbore 30.

13:06:46 4 Q Okay. We can set Zang aside. I'm going to
 13:07:07 5 send over Exhibit 1022 which it's been previously
 13:07:12 6 marked 1022. It's shorthand referred to as the
 13:07:17 7 Ledet patent.

13:07:17 8 (Document marked previously as
 13:07:22 9 Exhibit 1022 was presented.)

13:07:22 10 BY MR. FERRARO:

13:07:33 11 Q Sending that over now. Let me know when
 13:07:35 12 you've received it and have it open.

13:07:43 13 A Yes, I have it.

13:07:44 14 Q Turn to column 29, lines 3 to 5, please.
 13:08:28 15 Let me know when you're there.

13:08:29 16 A Column 9?

13:08:31 17 Q 29?

13:08:31 18 A Oh, 29. Sorry.

13:08:33 19 Q Starting at lines 3 through 5.

13:08:41 20 A Lines 3 through 5?

13:08:44 21 Q Yeah.

13:08:44 22 A Okay.

13:08:47 23 Q Would you agree that this portion of the
 13:08:49 24 Ledet reference describes that the apertures may be
 13:08:56 25 "counterbored"?

13:09:00 1 A Yeah, in Dr. Ledet's patent '076 he
13:09:04 2 describes apertures as "counterbored" and does not
13:09:07 3 identify an aperture's counterbore as a distinct
13:09:12 4 structure. So in his description, counterbore -- he
13:09:18 5 describes apertures as counterbored.

13:09:23 6 Q Right. Well, he says they may be
13:09:28 7 counterbored, right?

13:09:29 8 A Yeah, they may be counterbored.

13:09:31 9 Q Would you agree that this portion does not
13:09:33 10 describe that bores may be counterbored?

13:09:40 11 A Well, he's saying -- and I'm going to read
13:09:45 12 line 3 in Ledet's patent. "One side of the
13:09:49 13 apertures may be filleted, chamfered, countersunk,
13:09:54 14 or counterbored to accommodate the head of the bone
13:09:57 15 screws."

13:09:59 16 Q Okay.

13:10:00 17 A In this reference, Dr. Ledet is referring to
13:10:03 18 apertures as holes and then he's saying that these
13:10:06 19 apertures or holes may contain fillets, chamfers,
13:10:10 20 countersinks or counterbored. So he is describing
13:10:14 21 apertures as counterbores and he doesn't distinguish
13:10:20 22 that from an aperture, counterbore being distinct
13:10:26 23 from that structure.

13:10:28 24 Q Does the word "bore" appear in column 29,
13:10:36 25 lines 3 to 5 in that sentence you just read?

13:10:40 1 A He describes one side of the apertures may
13:10:47 2 be filleted, chamfered, countersunk or counterbored
13:10:51 3 to accommodate the head of bone screw. That's what
13:10:54 4 it says.

13:10:55 5 Q So you'd agree that the word "bore," just
13:10:59 6 the word "bore," is not in that sentence?

13:11:04 7 A He uses the word apertures.

13:11:07 8 Q Okay. We can set this reference aside. I'm
13:11:19 9 going to send you over what's been previously marked
13:11:24 10 Exhibit 1031.

13:11:24 11 (Document marked previously as
13:11:27 12 Exhibit 1031 was presented.)

13:11:27 13 BY MR. FERRARO:

13:11:32 14 Q Let me know once you've received it and have
13:11:34 15 it open.

13:11:42 16 A Okay, I've got it.

13:11:43 17 Q Okay. What is this -- let's call it the Seo
13:11:58 18 reference -- describing?

13:12:00 19 A As I read Seo, patent ending in '592, his
13:12:04 20 abstract calls this present invention relates to
13:12:07 21 supporting legs of a portable computer.

13:12:19 22 Q Does this reference relate to surgical
13:12:23 23 implants?

13:12:24 24 A I don't recall addressing that in my
13:12:26 25 declaration.

13:12:27 1 Q You did not address it in your declaration.
 13:12:38 2 I'm looking at it right here. So do you -- but you
 13:12:42 3 read Seo, correct?

13:12:44 4 A Yes, I reviewed Seo's patent as it relates
 13:12:47 5 to the geometry that he uses to include a
 13:12:53 6 counterbore and a bore.

13:13:00 7 Q Right. And as you testified, Seo is related
 13:13:02 8 to supporting legs for a portable computer, is that
 13:13:04 9 right?

13:13:04 10 A That's what -- that's how he describes it in
 13:13:07 11 his abstract.

13:13:08 12 Q So I'll just ask it again for the record
 13:13:17 13 here.

13:13:17 14 The Seo reference is not related to surgical
 13:13:20 15 implants. Would you agree?

13:13:22 16 A I do not recall addressing that in my
 13:13:25 17 declaration.

13:13:26 18 Q Does the Seo reference relate to bone
 13:13:28 19 fixation systems?

13:13:30 20 A I do not recall addressing that in my
 13:13:32 21 declaration.

13:13:33 22 Q And does the Seo reference relate to
 13:13:37 23 surgical screws used to compress bones?

13:13:39 24 A I do not recall addressing that in my
 13:13:42 25 declaration.

13:13:43 1 Q So you reviewed Seo, correct?

13:13:49 2 A Yes, I have reviewed Seo. As I stated
13:13:53 3 before, I reviewed Seo patent '592 as he describes a
13:13:57 4 bore with stepped diameter geometry as a
13:14:01 5 counterbored bore 23.

13:14:05 6 Q Had Seo related to -- or if Seo related to
13:14:14 7 bone screws in connection with bone fixation
13:14:20 8 systems, would you have included that in your
13:14:22 9 declaration?

13:14:24 10 A I don't recall addressing that in my
13:14:28 11 declaration.

13:14:30 12 Q Let's turn to column 3, line 46.

13:14:58 13 A Okay.

13:14:58 14 Q Actually before we go there, I meant to ask
13:15:02 15 this at the top of the -- coming back from the
13:15:05 16 break.

13:15:05 17 Did you discuss any of your testimony with
13:15:07 18 Mr. Kamholz --

13:15:08 19 A No, I did not. No, I did not.

13:15:11 20 Q -- over the break? All right.

13:15:14 21 Let's turn back to the Seo reference,
13:15:16 22 column 3, lines 46.

13:15:21 23 A Paragraph 3, line 46.

13:15:24 24 Q Column 3, line 46.

13:15:26 25 A I'm sorry. I'm sorry. Column 3, line 46,

13:15:29 1 yes.

13:15:30 2 Q Would you agree that "counterbored bore" --

13:15:42 3 I'm sorry. Strike that.

13:15:43 4 Would you agree that element 23 is referred

13:15:47 5 to as a "counterbored bore"?

13:15:51 6 A In Figure 4 of Seo, patent '592, he

13:15:58 7 describes a bore with a stepped diameter geometry as

13:16:01 8 a "counterbored bore 23. "

13:16:06 9 Q Would you agree that counterbored bore 23 is

13:16:20 10 part of a specific leg of the portable computer

13:16:23 11 shown and described by the Seo reference?

13:16:25 12 A In Seo's Figure 4, it shows the counterbored

13:16:36 13 bore 23. He's depicting it with an arrow and an

13:16:40 14 element. So he is showing a counterbored bore 23

13:16:44 15 and I can't say if that's part of his leg, but it's

13:16:47 16 part of his invention.

13:16:51 17 Q Right. And his invention, as I think you

13:16:55 18 testified, is related to supporting legs for a

13:16:57 19 portable computer?

13:16:59 20 A That's how Mr. Seo in his abstract described

13:17:06 21 his invention.

13:17:07 22 Q Okay. So is it fair to say that the

13:17:12 23 counterbored bore 23 is -- it's part of the specific

13:17:32 24 -- it's part of the specific disclosure in Seo?

13:17:36 25 A I don't recall addressing that in my

13:17:38 1 declaration.

13:17:39 2 Q The counterbored bore 23 of Seo is described
13:17:58 3 in connection with Seo's invention, is that fair to
13:18:04 4 say?

13:18:04 5 A Yeah, Seo describes a bore with a stepped
13:18:07 6 geometry -- a stepped-diameter geometry as a
13:18:12 7 "counterbored bore 23" in his patent.

13:18:14 8 Q Okay. Flipping over to your second
13:18:19 9 declaration, but keeping up Seo as well, if you have
13:18:23 10 to refer to it, turn to your paragraph 22.

13:18:28 11 A Yes.

13:18:29 12 Q You see the annotated figure in the top
13:18:34 13 middle of the page?

13:18:35 14 A Yes, I do.

13:18:36 15 Q Can you tell me what element 22 is that you
13:18:41 16 annotated blue?

13:18:56 17 A I don't recall addressing that in my
13:18:58 18 declaration.

13:19:00 19 Q Well, you annotated it blue, right? Do I
13:19:03 20 have that right?

13:19:08 21 A I don't recall addressing that in my
13:19:11 22 declaration.

13:19:12 23 Q What's annotated blue in your declaration?

13:19:17 24 A What I am describing in Figure 4 taken as an
13:19:21 25 annotated figure from Seo describes a

13:19:26 1 stepped-diameter geometry as a counterbored bore 23.

13:19:30 2 So I am showing counterbored bore 23 as a stepped

13:19:36 3 geometry in his invention.

13:19:38 4 Q Okay. And what did you color blue?

13:19:45 5 A I don't recall addressing that in my

13:19:48 6 declaration.

13:19:49 7 Q Did you color that blue?

13:19:53 8 A I don't recall addressing that in my

13:19:56 9 declaration.

13:19:56 10 Q So who colored that blue?

13:20:00 11 A I don't recall addressing that in my

13:20:03 12 declaration.

13:20:03 13 Q Maybe I'm color blind. Is there a blue

13:20:07 14 component in that figure?

13:20:11 15 A I don't recall addressing that in my

13:20:13 16 declaration.

13:20:14 17 Q Okay. So just for the record, there's a

13:20:18 18 blue component in paragraph 22 that Mr. Dominguez

13:20:25 19 doesn't recall addressing in his declaration, even

13:20:28 20 though it's in his declaration. It's colored blue

13:20:32 21 and it's pointing to component 22. So it's in his

13:20:40 22 declaration, but he doesn't recall discussing it in

13:20:44 23 his declaration and appears unwilling to answer what

13:20:47 24 22 is. We can move on from -- actually one other

13:21:00 25 question related to this.

13:21:07 1 In looking at this figure -- this annotated
13:21:11 2 figure in your paragraph 22 in Exhibit 1018, what's
13:21:29 3 counterbored here?

13:21:48 4 A Seo describes the bore with a
13:22:00 5 stepped-diameter geometry as a "counterbored bore
13:22:06 6 23."

13:22:08 7 Q Is -- stepped-diameter geometry, is that in
13:22:15 8 Seo, those words?

13:22:29 9 A I don't have it in quotes so I would say
13:22:31 10 that's my opinion that Seo describes a bore with
13:22:34 11 stepped geometry. But Seo does disclose it in
13:22:39 12 quotes as a counterbored bore 23.

13:22:42 13 Q Okay. So what part of 23 as shown in your
13:22:48 14 annotated figure to you suggests that that is a
13:22:54 15 stepped-diameter geometry?

13:22:58 16 A The stepped-diameter geometry is as a
13:23:20 17 counterbored bore 23.

13:23:24 18 Q So where is the stepped-diameter geometry?

13:23:28 19 A There are two different diameters in this
13:23:31 20 particular figure, one is a counterbored bore 23.

13:23:40 21 Q One of the diameters is counterbored bore
13:23:43 22 23, is that what you're saying?

13:23:47 23 A Yes, that's how Seo called it, counterbored
13:23:50 24 bore 23.

13:23:52 25 Q And so where is the step -- where is the

13:23:55 1 other diametered bore or counterbore, however you
13:23:59 2 want to call it?

13:24:00 3 A Well, he's describing a bore and a
13:24:03 4 counterbore in a single structure. So when you look
13:24:06 5 at this structure, you've got item -- two
13:24:10 6 counterbores or the bore and the counterbore are 23
13:24:14 7 and 22. Those are two stepped-diameter geometries
13:24:22 8 and he is describing a counterbored bore 23.

13:24:28 9 Q So you recall addressing element 22 is what
13:24:33 10 I take from that testimony. Is that correct?

13:24:36 11 A I'm addressing it as Seo is depicting a bore
13:24:39 12 and a counterbore in a single structure.

13:24:49 13 Q So you stated so when you look at this
13:24:55 14 structure, you've got two counterbores for the bore
13:25:02 15 and the counterbore are 23 and 22. So which one's
13:25:14 16 which? Which is the bore and which is the
13:25:16 17 counterbore out of 22 and 23?

13:25:19 18 A Seo is calling it a counterbored bore 23.
13:25:43 19 So bore 23 -- the bore is 23 and that bore 23 is
13:25:49 20 counterbored. So he's calling it in his words a
13:25:53 21 counterbored bore 23. So bore is 23. The
13:25:58 22 counterbore of that bore 23 is what is 22.

13:26:08 23 Q Okay. So 22 is the counterbore of what
13:26:17 24 we're saying is 23?

13:26:18 25 A As Seo describes it, it is a counterbored

13:26:20 1 bore to bore 23. So his bore 23 is counterbored in
13:26:29 2 his figure.

13:26:29 3 Q So you colored 22 blue to reflect that it's
13:26:36 4 the counterbore 22 to the bore that's red that's 23,
13:26:43 5 correct?

13:26:44 6 A I don't recall addressing that in my
13:26:46 7 declaration.

13:26:46 8 Q Well, why did you color that component 22
13:26:50 9 blue?

13:26:51 10 A I don't recall addressing that in my
13:26:53 11 declaration.

13:26:54 12 Q It's literally in your declaration.

13:27:02 13 A I don't recall addressing the colors in my
13:27:07 14 declaration.

13:27:09 15 Q You don't recall applying the color to 22 in
13:27:16 16 your declaration?

13:27:18 17 A I don't recall addressing that in my
13:27:20 18 declaration.

13:27:21 19 Q Did somebody else prepare your declaration?

13:27:25 20 A I don't recall addressing that in my
13:27:27 21 declaration.

13:27:28 22 Q What don't you recall addressing?

13:27:33 23 A I don't recall addressing --

13:27:35 24 Q What you don't recall?

13:27:37 25 A I don't recall addressing that in my

13:27:39 1 declaration. I have recalled -- I've addressed that
13:27:43 2 Seo has a counterbored bore 23 in his Figure 4.
13:27:47 3 I've addressed that Figure 23 or item 23 is his bore
13:27:51 4 and that Item 22 is a counterbore leading into this
13:27:54 5 bore. And the whole purpose of this is that Seo is
13:27:59 6 depicting that a bore and a counterbore has a single
13:28:02 7 structure.

13:28:09 8 Q Okay. Let's turn to -- actually give me one
13:28:40 9 second. Let's turn to column 3, line 45 and 46.

13:29:05 10 A Yes.

13:29:05 11 Q Can you read that sentence, two-line
13:29:10 12 sentence into the record?

13:29:11 13 A "As shown in Figures 3 and 4, a seating
13:29:16 14 surface 22 is located inside a counterbored bore 23
13:29:21 15 that goes through the leg 2."

13:29:27 16 Q Do you understand what a seating surface is
13:29:30 17 or what's your understanding of a seating surface?

13:29:33 18 A Well, Seo is referring to seating surface as
13:29:37 19 element 22, which is -- it's a -- he's calling it a
13:29:44 20 seating surface 22 located inside a counterbored
13:29:47 21 bore 23.

13:29:49 22 Q A couple things there. If we turn to your
13:29:57 23 Exhibit 1018, does element 22 look like it's inside
13:30:04 24 23?

13:30:06 25 A Seo is depicting a bore and counterbore as a

13:30:21 1 single structure, so that entire structure is one
13:30:29 2 bore that contains a counterbore.

13:30:32 3 Q Okay. Let's go back to the other question.
13:30:36 4 What's your understanding of a seating surface
13:30:38 5 that's being called out as 22 in Seo?

13:30:42 6 A Well, looking at -- I mean, Seo calls it a
13:30:48 7 seating surface and he calls it -- and he identifies
13:30:51 8 it as item 22. And in the same language, he's using
13:30:57 9 that as a, in my opinion, a stepped geometry that he
13:31:03 10 is then calling "a counterbored bore." So item 22
13:31:08 11 he may have called it a seating surface, but in his
13:31:11 12 description in his patent, he's calling it a
13:31:13 13 counterbore to bore 23. So I think he's -- he's
13:31:18 14 calling it a counterbored bore to 23. So 22 is a
13:31:23 15 counterbore to bore 23.

13:31:25 16 Q Where in -- go ahead. Finish. I'm sorry.
13:31:31 17 I didn't mean to interrupt you.

13:31:32 18 A I'm done.

13:31:33 19 Q So my follow-up question to that is where
13:31:35 20 does he say that 22 -- where does Seo say that 22 is
13:31:41 21 a counterbore? Can you point to me?

13:31:45 22 A In that same sentence that I just read off.
13:31:47 23 As shown in Figures 3 and 4, a seating surface 22 is
13:31:51 24 located inside a counterbored bore 23 that goes
13:31:57 25 through the leg 2. So 22 in Figure 4, as I showed

13:32:09 1 in my declaration, is a counterbore to bore 23, a
13:32:17 2 counterbored bore to 23.

13:32:19 3 Q That's your opinion, right?

13:32:22 4 A It is my opinion that it is a
13:32:24 5 stepped-diameter geometry, but it is Seo's opinion
13:32:27 6 that he calls it a counterbored bore at 23. He's
13:32:33 7 calling it a counterbored bore at 23.

13:32:33 8 Q He doesn't call 22 a counterbored bore. He
13:32:37 9 calls 22 a seating surface, right?

13:32:50 10 A He does call 22 as a seating surface which
13:33:05 11 is located inside a counterbored bore. So the
13:33:08 12 element 23 contains a counterbore to bore 23. So in
13:33:16 13 essence, he is describing a counterbore within bore
13:33:20 14 23.

13:33:25 15 Q Isn't Seo saying that the seating surface 22
13:33:28 16 is located inside a counterbored bore?

13:33:35 17 A That's what it says in his patent, yes, a
13:33:38 18 seating surface 22 is located inside a counterbored
13:33:41 19 bore 23.

13:33:44 20 Q So the counterbored bore already exists
13:33:48 21 without the seating surface, does it not?

13:33:53 22 A I don't recall addressing that in my
13:33:57 23 declaration.

13:33:58 24 Q Okay. We can move on. Let's -- I'm going
13:34:10 25 to send Exhibit 1032, previously marked Exhibit 1032

13:34:19 1 to you now, Mr. Dominguez. Let me know once you've
13:34:22 2 received it and have it open.

13:34:22 3 (Document marked previously as
13:34:38 4 Exhibit 1032 was presented.)

13:34:38 5 A Yes, I've got it.

13:34:39 6 Q Okay. What is this reference, Exhibit 1032
13:34:48 7 to Exner, describing?

13:34:51 8 A Well, in Exner's patent '453, he describes a
13:34:56 9 bore with a stepped-diameter geometry as
13:34:59 10 counterbored axial bore 6 in his figure.

13:35:04 11 Q What's the general invention directed to?

13:35:14 12 A I do not recall addressing that in my
13:35:25 13 declaration.

13:35:26 14 Q Let's take a look at abstract together.

13:35:33 15 A Sure.

13:35:33 16 Q I'll read the first sentence into the
13:35:35 17 record. "The press stem of an extrusion press has a
13:35:41 18 bolt or peg received in a central bore." I'll read
13:35:48 19 the next sentence as well. "The bolt locates in a
13:35:52 20 recess in a dummy block to hold the dummy block to
13:35:55 21 the end of the stem."

13:35:59 22 Does that refresh your recollection as to
13:36:02 23 what this reference is disclosing?

13:36:07 24 A Yeah, I didn't -- I didn't recall addressing
13:36:11 25 that in my declaration.

13:36:13 1 Q What's the that? You don't recall

13:36:18 2 addressing what in your declaration?

13:36:20 3 A Addressing the abstract of Exner's patent in
13:36:25 4 my declaration, the lines that you've just read.

13:36:27 5 Q Okay. Did you read the Exner patent in --
13:36:33 6 to prepare your declaration?

13:36:34 7 A Yes, I reviewed the Exner patent and as it
13:36:38 8 pertains to my declaration, I described a bore with
13:36:45 9 a stepped-diameter geometry as a "counterbored axial
13:36:49 10 bore 6" in his patent.

13:36:52 11 Q Okay. Did you read the title of Exner when
13:36:57 12 you reviewed the patent?

13:37:01 13 A I don't recall addressing that in my
13:37:03 14 declaration.

13:37:03 15 Q So when you review references, do you often
13:37:11 16 not review the titles of the references?

13:37:18 17 A I don't recall addressing that in my
13:37:20 18 declaration.

13:37:21 19 Q No, you did not state the title of Exner. I
13:37:26 20 think we can all agree to that.

13:37:28 21 What I'm asking you is you reviewed this
13:37:32 22 reference. You've agreed to that already.

13:37:34 23 A Yes.

13:37:35 24 Q Did you review the title of the reference?

13:37:40 25 A I don't recall addressing that in my

13:37:42 1 declaration.

13:37:42 2 Q Okay. So your testimony is you read the
13:37:45 3 reference but didn't read the title?

13:37:48 4 A I don't recall addressing that in my
13:37:50 5 declaration.

13:37:51 6 Q Okay. Well, let's read the title now. It
13:37:56 7 might be for your first time.

13:37:57 8 A Okay.

13:37:58 9 Q "Device for securing the dummy block on the
13:38:02 10 press stem of metal extrusion presses." Do you have
13:38:11 11 any idea what that means?

13:38:14 12 A I don't recall addressing that in my
13:38:16 13 declaration.

13:38:17 14 Q No. We're reading it now. I know. As you
13:38:20 15 sit here now, do you know what Exner's -- do you
13:38:26 16 know what Exner is discussing or disclosing?

13:38:30 17 A Exner is disclosing and he is depicting a
13:38:35 18 bore and a counterbore as a single structure. And
13:38:36 19 he is disclosing and describing a bore with a
13:38:39 20 stepped-diameter geometry as a "counterbored axial
13:38:43 21 bore 6" in his figure.

13:38:45 22 Q Yes. Thank you for that reminder. The bore
13:38:51 23 is in connection with what though?

13:38:58 24 A Exner is describing a bore with a
13:39:01 25 stepped-diameter geometry as counterbored axial bore

13:39:05 1 6 in his figure.

13:39:07 2 Q In connection with what?

13:39:10 3 A With his invention, his device.

13:39:12 4 Q Which is?

13:39:14 5 A It is what he describes in his patent '453.

13:39:24 6 Q Do you want me to read the reference? So
13:39:34 7 you read the reference, but cannot testify as to
13:39:39 8 what it's about? Is that fair?

13:39:43 9 A My opinion is that Exner has disclosed a
13:39:48 10 bore with a stepped-diameter geometry as
13:39:51 11 counterbored as -- as a counterbored axial bore 6
13:39:55 12 which in -- as an example of an exhibit in an
13:40:01 13 existing prior art that depicts a bore in a
13:40:06 14 counterbore as a single structure.

13:40:09 15 Q But you don't know what that structure --
13:40:13 16 I'm sorry. Strike that.

13:40:15 17 You don't know what that bore is being used
13:40:17 18 for?

13:40:17 19 A I don't recall addressing that in my
13:40:21 20 declaration.

13:40:22 21 Q Okay. That's great. Thank you. So let's
13:40:27 22 go through some of these additional questions. I
13:40:32 23 already know the answers, but let's do it for fun.

13:40:35 24 So this reference is not related to surgical
13:40:37 25 implants, is that right?

13:40:40 1 A I don't recall addressing that in my
13:40:43 2 declaration.

13:40:43 3 Q And it's not -- it does not relate to bone
13:40:47 4 fixation systems, the Exner reference, is that
13:40:50 5 right?

13:40:50 6 A I do not recall addressing that in my
13:40:53 7 declaration.

13:40:53 8 Q And the Exner reference does not relate to
13:40:58 9 surgical screws used to compress bones, is that
13:41:02 10 right?

13:41:02 11 A I don't recall addressing that in my
13:41:04 12 declaration.

13:41:04 13 Q If Exner did disclose surgical screws used
13:41:16 14 to compress bones, would you have included it in
13:41:19 15 your declaration?

13:41:21 16 A I don't recall addressing that in my
13:41:24 17 declaration.

13:41:24 18 Q Let's turn to column 2, lines 15 to 16 of
13:41:39 19 the Exner reference.

13:41:49 20 A Column 2, lines 15-16.

13:41:54 21 Q Yes.

13:41:55 22 A Okay, I'm there.

13:41:56 23 Q Would you agree that the element 6 -- that
13:42:03 24 element 6 is referred to as "a stepped or
13:42:08 25 counterbored axial bore"?

13:42:14 1 A Indeed, Exner describes a bore with a
13:42:16 2 stepped-diameter geometry as a "counterbored axial
13:42:21 3 bore 6" in his patent. So he does describe it as a
13:42:33 4 counterbored axial bore 6.

13:42:35 5 Q A stepped or a counterbored axial bore,
13:42:35 6 right?

13:42:38 7 A Yes, he describes it as a bore with a
13:42:40 8 stepped-diameter geometry as a counterbored axial
13:42:42 9 bore 6.

13:42:44 10 Q And would you agree that the stepped -- "the
13:42:48 11 stepped or counterbore axial bore" 6 is part of the
13:42:54 12 specific invention shown and described by the Exner
13:43:00 13 reference?

13:43:02 14 A Yes, his figure discloses element 6 as a
13:43:05 15 counterbored axial bore 6.

13:43:08 16 Q Right. In connection with the Exner system?

13:43:13 17 A Yes, he describes his invention as a bore
13:43:16 18 with a stepped-diameter geometry as counterbore
13:43:20 19 axial bore 6 as relates to his invention.

13:43:23 20 Q Okay.

13:43:26 21 A The patent that we're talking about is '453.

13:43:28 22 Q Thank you. Yes, the Exner reference,
13:43:32 23 Exhibit 1032. I have one more of these references.
13:43:37 24 It might be a good time to take a short lunch break.
13:43:42 25 Does that work for you, Mr. Dominguez?

13:43:43 1 A Yes.

13:43:44 2 Q Okay. So let's put Exner aside. I'll send
13:43:47 3 over to you what's been previously marked
13:43:50 4 Exhibit 1023.

13:43:50 5 (Document marked previously as
13:43:52 6 Exhibit 1023 was presented.)

13:43:52 7 BY MR. FERRARO:

13:43:55 8 Q Let me know once you've received it and have
13:43:58 9 it open. Also I'll ask for you to have your
13:44:12 10 declaration open as well.

13:44:13 11 A Okay.

13:44:15 12 Q So first looking at your paragraph 26 in
13:44:22 13 your second declaration, which is Exhibit 1018, you
13:44:26 14 state that -- I'll wait for you to get there if
13:44:31 15 you're not there yet.

13:44:32 16 A Go ahead.

13:44:32 17 Q So you state there that "Dr. Ledet refers to
13:44:38 18 a void having" a cylindrical -- "having cylindrical
13:44:42 19 sections of different diameters as a single
13:44:49 20 'tunnel.'" Is that right?

13:44:52 21 A Yes, that's what it reads.

13:44:56 22 Q And you read -- strike that.

13:45:05 23 Turning to Dr. Ledet's article that your
13:45:10 24 paragraph 26 was referencing, which is Exhibit 1023,
13:45:18 25 does Dr. Ledet refer to a void having cylindrical

13:45:23 1 sections of different diameters to a single bore or
13:45:31 2 as a single bore?

13:45:39 3 A In paragraph 26 as you just read, Dr. Ledet
13:46:06 4 refers to a void having cylindrical sections of
13:46:08 5 different diameters as a single "tunnel."

13:46:13 6 Q Right. So he doesn't refer to a void having
13:46:20 7 cylindrical sections of different diameters as a
13:46:22 8 single bore, correct?

13:46:39 9 A Dr. Ledet refers to a void having
13:46:41 10 cylindrical sections of different diameters as a
13:46:43 11 single tunnel.

13:46:45 12 Q Okay. So let's turn to your paragraph 29 in
13:46:58 13 your second declaration, Exhibit 1018.

13:47:01 14 A Yes.

13:47:01 15 Q You state there that Dr. Ledet refers to a
13:47:05 16 void having two abutting cylindrical sections as a
13:47:10 17 unitary tunnel, aperture, or hole, correct?

13:47:13 18 A Yes.

13:47:14 19 Q But you don't -- strike that.

13:47:21 20 But in neither -- well, strike that.

13:47:24 21 But in the Ledet article, which is 1023,
13:47:29 22 does Dr. Ledet refer to a void having cylindrical
13:47:32 23 sections of different diameters as a single bore?

13:47:39 24 A Dr. Ledet describes using various synonyms,
13:47:48 25 tunnel, aperture or hole, as meaning one of the

13:47:52 1 same. You see here in paragraph 29, "Thus in his
13:47:56 2 own publication and patent, Dr. Ledet describes a
13:47:59 3 void having two abutting cylindrical sections as a
13:48:03 4 unitary tunnel" -- "'tunnel,' 'aperture' or 'hole.'"

13:48:10 5 So Dr. Ledet discloses that he considers a
13:48:17 6 void having two abutting cylindrical sections as a
13:48:21 7 unitary -- meaning one in my mind -- tunnel,
13:48:24 8 aperture or hole. So he's describing all three
13:48:27 9 words to mean the same thing, a tunnel, an aperture
13:48:31 10 or a hole.

13:48:34 11 Q He doesn't include the word "bore" there,
13:48:36 12 right?

13:48:40 13 A It's not written there, no. Okay.

13:48:45 14 Q Okay. Now is a good time for a break if
13:48:48 15 it's good for everyone else. I could keep moving
13:48:53 16 too, but I figured this was a good spot to break.

17 (Whereupon, the deposition in the
18 above-entitled cause was recessed
19 to 2:11 p.m. this date.)
20
21
22
23
24
25

1 A F T E R N O O N S E S S I O N

2 CROSS EXAMINATION (Resumed)

3 BY MR. FERRARO:

14:11:56 4 Q Mr. Dominguez, can you please turn to your
14:11:57 5 second declaration, Exhibit 1018?

14:12:01 6 A Yes.

14:12:02 7 Q Let me know when you're there.

14:12:05 8 A Yes, I'm there.

14:12:07 9 Q Turn to paragraph 17, please.

14:12:11 10 A Yes.

14:12:19 11 Q So in paragraph 17, you state second
14:12:27 12 sentence -- I'll just quote it -- "A counterbore is
14:12:31 13 not a structure unto itself, a counterbore is part
14:12:35 14 of a larger structure."

14:12:38 15 Did I read that correctly?

14:12:40 16 A That is correct.

14:12:42 17 Q Okay. You didn't cite to anything in that
14:12:56 18 paragraph, correct, to support that sentence?

14:13:02 19 A No, that is my opinion.

14:13:04 20 Q Okay. I'm going to transmit a -- or a share
14:13:15 21 a document with you. It's been -- I've marked it as
14:13:20 22 new Exhibit 1024 -- I'm sorry -- 2024.

14:13:26 23 (Exhibit 2024 marked for identification.)

14:13:26 24 BY MR. KAMHOLZ:

14:13:27 25 Q And I'm going to send that over to you now.

14:13:29 1 Just let me know once you've received it and have it
14:13:41 2 opened.

14:13:47 3 A Okay, I've got it open.

14:13:51 4 Q Do you see this is a copy of U.S. Patent
14:13:57 5 Number 5,057,103 to --

14:14:01 6 A Yes.

14:14:01 7 Q -- to Davis?

14:14:03 8 A Yes.

14:14:03 9 Q And the title of the '103 patent to Davis is
14:14:15 10 "Compressive intramedullary nail."

14:14:17 11 Do you see that?

14:14:17 12 A I see that as written.

14:14:19 13 Q Okay. Turn to column 5 of this reference,
14:14:26 14 specifically line 44.

14:14:37 15 A Line 44.

14:14:40 16 Q Yes of column 5. Let me know when you're
14:14:42 17 there.

14:14:43 18 A Yeah, I'm there.

14:14:44 19 Q Okay. Here, Davis starts describing
14:14:49 20 Figure 3b. Do you see that?

14:14:53 21 A Let me take a look. Yeah, I see Figure 3b.

14:15:04 22 Q And starting at line 44, Davis explains "The
14:15:10 23 retaining cap 35 is generally hexagonal with a
14:15:15 24 central longitudinal bore 103 there-through. The
14:15:21 25 bore 103 receives the shaft of the force adjustment

14:15:26 1 bolt 33." Do you see that?

14:15:27 2 A I see that.

14:15:28 3 Q And at line 47, Davis further explains, "A

14:15:35 4 counterbore 105 is formed in one end. The

14:15:42 5 counterbore 105 has internal threads for coupling to

14:15:45 6 the threads 55 on the outer member second end 43."

14:15:50 7 Do you see that?

14:15:51 8 A Yes, I see that.

14:15:52 9 Q In this excerpt that we just went through,

14:15:58 10 Davis is discussing bore 103 and counterbore 105 as

14:16:03 11 two separate structures, is that right?

14:16:06 12 A I don't recall addressing that in my

14:16:08 13 declaration.

14:16:08 14 Q You most certainly did not address it in

14:16:17 15 your declaration. What I'm asking is if Davis is

14:16:21 16 discussing bore 103 and counterbore 105 as you're

14:16:26 17 sitting here looking at this document as two

14:16:30 18 separate structures?

14:16:33 19 A I don't recall addressing that in my

14:16:36 20 declaration.

14:16:36 21 Q In the excerpts that we just read, or I just

14:16:43 22 read and you nodded along to -- and for your

14:16:51 23 reference it's column 5, lines 44 to 50 -- does

14:17:10 24 Davis say that bore 103 includes or has or comprises

14:17:18 25 counterbore 105?

14:17:23 1 A I don't recall addressing that in my
14:17:27 2 declaration.

14:17:27 3 Q When you read the paragraph on column 5,
14:17:37 4 lines 44 to 50, as you're sitting there right now
14:17:43 5 when you read that paragraph, do you see -- does
14:17:48 6 that paragraph say that bore 103 includes or has or
14:17:54 7 comprises a counterbore 105?

14:17:57 8 A I see what's written in lines 44 through 50,
14:18:05 9 but I did not recall addressing that in my
14:18:08 10 declaration.

14:18:09 11 Q So you didn't take the Davis patent, this
14:18:14 12 patent in front of you, into account when rendering
14:18:17 13 your opinions in this case, is that right?

14:18:19 14 A I don't recall addressing that in my
14:18:21 15 declaration.

14:18:21 16 Q So you didn't consider the Davis patent when
14:18:27 17 rendering your opinions in this case, is that right?

14:18:29 18 A I don't recall addressing that in my
14:18:31 19 declaration.

14:18:31 20 Q Okay. You can set that aside.

14:18:35 21 A Okay.

14:18:37 22 Q I'm now going to send over to you what I've
14:18:51 23 marked as new Exhibit 2025.

14:18:56 24 (Exhibit 2025 marked for identification.)

14:18:56 25 ///

14:18:56 1 BY MR. KAMHOLZ:

14:18:57 2 Q Let me know once you've received it and have

14:19:00 3 it open.

14:19:09 4 A Yes, I've got it open.

14:19:11 5 Q Do you see this is a copy of U.S. Patent

14:19:18 6 Number 5,139,499 to Small?

14:19:22 7 A Yes, I see that.

14:19:23 8 Q And the title of Exhibit 2025, the Small

14:19:30 9 patent, is "Screw and driver." Do you see that?

14:19:33 10 A Yes, I see that.

14:19:35 11 Q Okay. Turn to column 1, please, of the

14:19:40 12 patent.

14:19:49 13 A Yes, I'm on column 1.

14:19:51 14 Q Lines 8 through 11. Do you see that Davis

14:19:57 15 explains that "The present invention relates to

14:20:01 16 screw and driver assemblies, and more particularly,

14:20:06 17 to surgical screw and driver assemblies"?

14:20:09 18 A Yeah, I see that as written.

14:20:11 19 Q Turn to column 3 of the Small patent.

14:20:23 20 A Okay.

14:20:24 21 Q And turn your attention to line 16,

14:20:34 22 column 3. Small starts describing Figures 1 to 3

14:20:41 23 there. Do you see that?

14:20:42 24 A Yes, I do.

14:20:42 25 Q And starting at line 35, a little further

14:20:51 1 down the column --

14:20:55 2 A Okay.

14:20:55 3 Q -- Small explains screw 20 -- this is in

14:21:00 4 quotes, "Screw 20 comprises a blind axial bore 26

14:21:05 5 which is opened to back end 22. Axial bore 26 has a

14:21:12 6 circular cross-section." Do you see that?

14:21:14 7 A Yes, I do.

14:21:15 8 Q And then a little further down at line 41,

14:21:19 9 same column, Small explains "Screw 20 also comprises

14:21:27 10 a blind counterbore 28 which is coaxial with axial

14:21:34 11 bore 26 and is open to back end 22; counterbore 28

14:21:41 12 has a polygonal, preferably hexagonal,

14:21:46 13 cross-section."

14:21:47 14 Do you see that?

14:21:47 15 A Yes, I see that.

14:21:49 16 Q So in these excerpts, Small is discussing

14:21:55 17 bore 26 and bore 28. Do you agree?

14:22:00 18 A I don't recall addressing that in my

14:22:04 19 declaration.

14:22:04 20 Q Okay. And so in these excerpts that we just

14:22:12 21 went through, Small is discussing bore 26 and

14:22:15 22 counterbore 28 as two separate structures, is it

14:22:19 23 not?

14:22:20 24 A I don't recall addressing that in my

14:22:22 25 declaration.

14:22:23 1 Q So in other words, Small does not say that
14:22:33 2 bore 26 either includes, has, comprises counterbore
14:22:39 3 28, correct?

14:22:41 4 A I do not recall addressing that in my
14:22:43 5 declaration.

14:22:44 6 Q Let's turn to Figure 1 of Small.

14:23:10 7 A Okay.

14:23:11 8 Q Do you see bore 26 or element 26, which is
14:23:17 9 described as bore 26?

14:23:21 10 A I see element 26 in Figure 1, yes.

14:23:23 11 Q Okay. And do you see that element 26 or
14:23:29 12 bore 26 is circular?

14:23:36 13 A I really can't tell if it is. I see just
14:23:38 14 dashed lines.

14:23:42 15 Q Okay. Do you see element 28?

14:23:46 16 A I see it in Figure 1, element 28.

14:23:50 17 Q Which has previously been described as
14:23:53 18 counterbore 28?

14:23:56 19 A I don't recall addressing that in my
14:23:58 20 declaration.

14:23:58 21 Q Do you see there that counterbore, or let's
14:24:11 22 call it element 28, previously described as
14:24:15 23 counterbore 28, is polygonal?

14:24:18 24 A I don't recall addressing that in my
14:24:20 25 declaration.

14:24:22 1 Q What shape does element 28 look like to you?

14:24:26 2 A Well, in Figure 1 it just looks like a
14:24:30 3 dashed line to me, but I have not addressed that in
14:24:32 4 my declaration.

14:24:33 5 Q Do you see the dashed lines that go from the
14:24:40 6 bottom of element 28 to the top? There's three
14:24:45 7 dashed lines.

14:24:49 8 A I'm not sure I follow your description.

14:24:53 9 Q There's element 28 which is pointed to let's
14:24:58 10 call that a dashed line. Maybe I can -- I can even
14:25:05 11 share my screen. Maybe that's easier. Make this a
14:25:26 12 little smaller. Can you see the screen?

14:25:27 13 A Yes, I can.

14:25:28 14 Q Okay. So let's go back a second actually to
14:25:35 15 reference number 26 or element number 26 which is
14:25:38 16 bore 26. Do you see that where my mouse is?

14:25:41 17 A Yes, I see where you're indicating 26.

14:25:44 18 Q Okay. What shape does element 26 look like
14:25:53 19 as being shown by my mouse?

14:25:55 20 A I don't recall addressing that in my
14:25:59 21 declaration.

14:25:59 22 Q As you sit here today, does that -- do you
14:26:08 23 have an idea as to what shape that looks like?

14:26:10 24 A I don't recall addressing that in my
14:26:13 25 declaration.

14:26:13 1 Q So you can't tell what shape that is sitting
14:26:17 2 here?

14:26:18 3 A I don't recall addressing it in my
14:26:21 4 declaration.

14:26:21 5 Q Okay. So let's move to element 28 which is
14:26:29 6 counterbore 28. Do you see where my mouse is?

14:26:33 7 A I see where your mouse is.

14:26:35 8 Q Which is referencing element 28?

14:26:39 9 A Yeah, I see that referencing element 28.

14:26:42 10 Q Okay. So element 28 or counterbore 28 has
14:26:51 11 — and I'll show on my mouse — three dashed lines,
14:26:56 12 internal dashed lines, one, two, three. Do you see
14:27:00 13 those?

14:27:01 14 A I see the ones you've pointed to, yes.

14:27:04 15 Q Are those the types of dashed lines that
14:27:10 16 would suggest sides on a geometric shape?

14:27:17 17 A I don't recall addressing that in my
14:27:20 18 declaration.

14:27:20 19 Q Can you answer that question as you sit here
14:27:24 20 today?

14:27:25 21 A I don't recall addressing that in my
14:27:27 22 declaration.

14:27:27 23 Q Are elements 28 and 26 two different shapes?

14:27:44 24 A I don't recall addressing that in my
14:27:46 25 declaration.

14:27:46 1 Q Did you take this reference, the Small
14:28:01 2 patent, into account when rendering your opinions in
14:28:05 3 this case?

14:28:05 4 A I don't recall addressing that in my
14:28:07 5 declaration.

14:28:08 6 Q Have you ever seen the Small patent?

14:28:12 7 A I don't recall addressing that in my
14:28:16 8 declaration.

14:28:17 9 Q Do you recall having ever seen the Small
14:28:27 10 patent?

14:28:28 11 A I don't recall addressing that in my
14:28:30 12 declaration.

14:28:30 13 Q Is the Small patent cited in your
14:28:41 14 declaration?

14:28:42 15 A I don't recall addressing that in my
14:28:45 16 declaration.

14:28:45 17 Q Well, you drafted your declaration, right,
14:28:54 18 the second declaration?

14:28:55 19 A Yes, I did.

14:28:55 20 Q Did you cite or discuss the Small reference
14:29:10 21 in your declaration?

14:29:12 22 A I don't recall addressing that in my
14:29:15 23 declaration.

14:29:15 24 Q Okay. Let's put this to the side. Stop
14:29:32 25 sharing there. I'm going to send you Exhibit --

14:29:40 1 what I've marked as new Exhibit 2026. I'll send
 14:29:45 2 that over to you.
 14:29:47 3 (Exhibit 2026 marked for identification.)
 14:29:49 4 BY MR. KAMHOLZ:
 14:29:49 5 Q Let me know when you've received it and have
 14:29:51 6 it opened.
 14:29:59 7 A Okay, I've got it open.
 14:30:00 8 Q Do you see this is a copy of U.S. Patent
 14:30:03 9 Number 7,967,851 to Bickley?
 14:30:08 10 A I see that, yes.
 14:30:09 11 Q And the title of this document,
 14:30:14 12 Exhibit 2026, is "Method and apparatus for securing
 14:30:18 13 an object to bone."
 14:30:19 14 Do you see that?
 14:30:20 15 A Yes, I do.
 14:30:22 16 Q Let's turn to column 4 of this reference and
 14:30:30 17 specifically line 31.
 14:30:42 18 A Column 4, line 31. Okay.
 14:30:45 19 Q At line 31, Bickley starts describing
 14:30:53 20 Figure 2. Do you see that?
 14:30:56 21 A Yes.
 14:30:57 22 Q And at lines 31 to 34, Bickley explains that
 14:31:03 23 plate 10 comprises, among other things, an opening
 14:31:07 24 35. Do you see that?
 14:31:08 25 A Can you repeat that again, please?

14:31:18 1 Q Sure. At lines 31 to 34, Bickley explains
14:31:22 2 that plate 10 comprises, among other things, an
14:31:27 3 opening 35 that's formed in the plate 10?

14:31:34 4 A I see line 31 reading "Plate 10 generally
14:31:39 5 comprises a distal surface 25 for positioning
14:31:43 6 against bone." We're looking at column 4?

14:31:52 7 Q Yes, 31 to 34.

14:31:57 8 A 31 to 34. Plate 10 is shown in detail in
14:32:01 9 Figure 2 and 3. Plate 10 generally comprises a
14:32:05 10 distal surface 25 (Figure 3) for positioning against
14:32:08 11 bone, a proximal surface 30 (Figure 2) and at least
14:32:12 12 one opening 35 formed in the plate.

14:32:19 13 Q Right. So plate 10 has an opening 35. Do
14:32:24 14 we agree?

14:32:28 15 A That's what I see on the patent.

14:32:31 16 Q And then at lines 34 to 38 in the same
14:32:37 17 column, Bickley explains that opening 25 [sic] is in
14:32:43 18 the form of a bore-counterbore configuration which
14:32:47 19 comprises a bore 40 on the distal surface of the
14:32:51 20 plate, a counterbore 45 on the proximal surface of
14:32:55 21 the plate, and an annular flange 50 formed at the
14:33:00 22 intersection of bore 40 and counterbore 45.

14:33:03 23 Do you see that?

14:33:04 24 A Yeah, I believe you opened that sentence by
14:33:07 25 saying opening 45. It should read opening 35.

14:33:11 1 Q Yes. Correct.

14:33:14 2 A I see that as written.

14:33:15 3 Q Okay. In this excerpt that we just
14:33:21 4 discussed, Bickley is discussing bore 40 and
14:33:25 5 counterbore 45 as two separate structures. Would
14:33:30 6 you agree?

14:33:30 7 A I do not recall addressing that in my
14:33:33 8 declaration.

14:33:33 9 Q So in this excerpt, Bickley does not say
14:33:41 10 that bore 40 either includes, has, comprises
14:33:48 11 counterbore 45, correct?

14:33:50 12 A I don't recall addressing that in my
14:33:52 13 declaration.

14:33:53 14 Q And in this excerpt, would you agree that
14:34:07 15 Bickley describes a component, an annular flange 50,
14:34:13 16 that is formed between 40 and counterbore — I'm
14:34:17 17 sorry — that is formed between bore 40 and
14:34:20 18 counterbore 45, thereby separating bore 40 and
14:34:25 19 counterbore 45?

14:34:26 20 A I don't recall addressing that in my
14:34:28 21 declaration.

14:34:30 22 Q Okay. We just looked at lines 34 to 48,
14:34:36 23 right, of Bickley?

14:34:37 24 A Yes, we have.

14:34:38 25 Q And you agreed that an annular flange 50

14:34:44 1 formed at the intersection of bore 40 and

14:34:48 2 counterbore 45 exists, right?

14:34:51 3 A I don't recall addressing that in my
14:34:53 4 declaration.

14:34:54 5 Q You see the sentence, right? Let me point
14:34:58 6 it out specifically. Starting at column 35 [sic],
14:35:09 7 line 37, after surface 30 it says, "an annular
14:35:15 8 flange 50 is formed at the intersection of bore 40
14:35:19 9 and counterbore 45. "

14:35:21 10 Do you see that?

14:35:21 11 A Yeah, I see what's written on the paper, but
14:35:24 12 I don't recall addressing that in my declaration.

14:35:25 13 Q We'll get to that.

14:35:30 14 Did you take the Bickley patent into account
14:35:32 15 when rendering your opinions in this case?

14:35:34 16 A I don't recall addressing that in my
14:35:36 17 declaration.

14:35:36 18 Q Have you ever seen the Bickley patent
14:35:45 19 before?

14:35:46 20 A I don't recall addressing that in my
14:35:49 21 declaration.

14:35:50 22 Q Is the Bickley patent cited in your second
14:35:54 23 declaration or in either declaration?

14:35:58 24 A I don't recall -- I don't recall addressing
14:36:00 25 that in my declaration.

14:36:01 1 Q We can set this aside. I'm going to send
14:36:10 2 you a new exhibit that I marked, Exhibit 2027, over
14:36:17 3 to you. Let me know when it gets there and that you
14:36:21 4 have it opened and ready.

14:36:24 5 (Exhibit 2027 marked for identification.)

14:36:24 6 A I've got it.

14:36:36 7 Q Do you see this is a copy of U.S. Patent
14:36:41 8 Number 8,221,478 to Patterson?

14:36:45 9 A Yes.

14:36:47 10 Q And the title of this exhibit 2027 is
14:36:53 11 "Snap-off surgical screw." Do you see that?

14:36:55 12 A Yes.

14:36:56 13 Q Okay. Let's turn to column 3, line 56.

14:37:18 14 A Okay, I'm there.

14:37:20 15 Q Column 3, line 56, Patterson explains that
14:37:32 16 "Each fastener retaining portion 10 has a fastener
14:37:36 17 hole or bore 20 there-through for receiving a
14:37:40 18 fastener." Do you see that?

14:37:43 19 A Yes, I see that written on the page.

14:37:46 20 Q And then a little further down at line 62,
14:37:54 21 Patterson explains "The fastener retaining portion
14:38:00 22 10 preferably has a counterbore 30 formed in the
14:38:07 23 outer surface 3. The counterbore 30 is preferably
14:38:12 24 substantially in actual alignment with the fastener
14:38:17 25 hole 20." Do you see that?

14:38:19 1 A I see that as written, yes.

14:38:21 2 Q And in this excerpt, would you agree that
14:38:25 3 Patterson is discussing bore 20 and counterbore 30
14:38:29 4 as two separate structures?

14:38:30 5 A I don't recall addressing that in my
14:38:33 6 declaration.

14:38:34 7 Q That excerpt that we just reviewed,
14:38:46 8 column 3, lines 56 to 65, does not say that bore 20
14:39:00 9 -- or I should say -- yeah, hole or bore 20
14:39:03 10 includes, has, comprises counterbore 30, correct?

14:39:07 11 A I don't recall addressing that in my
14:39:09 12 declaration.

14:39:11 13 Q And again, at column 3, line 56, Patterson
14:40:07 14 says each fastener retaining portion has a fastener
14:40:10 15 hole or bore 20. You see that, correct?

14:40:14 16 A I see that as written, yes.

14:40:16 17 Q And then further down at 62, Patterson then
14:40:29 18 says, Figure 3 -- "As shown in Figure 3, the
14:40:33 19 fastener retaining portion 10 preferably has a
14:40:37 20 counterbore formed in the outer surface."

14:40:40 21 Do you see that?

14:40:41 22 A I see that as written, yes.

14:40:43 23 Q Okay. Did you take the Patterson patent
14:40:50 24 into account when rendering your opinions in this
14:40:53 25 case?

14:40:53 1 A I don't recall addressing that in my
14:40:54 2 declaration.

14:40:55 3 Q Have you ever seen the Patterson reference
14:41:00 4 prior to today?

14:41:01 5 A I don't recall addressing that in my
14:41:03 6 declaration.

14:41:03 7 Q Is the Patterson reference cited in either
14:41:10 8 of your declarations in this proceeding?

14:41:15 9 A I don't recall addressing them in my
14:41:18 10 declaration.

14:41:19 11 Q Okay. We can put this aside. Let's turn
14:41:51 12 back to your second declaration, Exhibit 1018.

14:41:55 13 A Okay.

14:41:56 14 Q And please turn to paragraph 32.

14:42:06 15 A Okay.

14:42:06 16 Q In the last sentence of 32, you say,
14:42:26 17 "Identifying 103 as the very" -- 103 of Chang, it's
14:42:34 18 kind of taken out of context, but you can confirm.
14:42:36 19 So "Identifying 103 of Chang as the very top of the
14:42:40 20 terminal end does not limit the terminal end to the
14:42:44 21 top surface of the nail."

14:42:45 22 Do you see that?

14:42:46 23 A Yes, I do.

14:42:47 24 Q You don't cite to any support -- anything in
14:42:52 25 the record to support that statement, do you?

14:43:00 1 A I list in paragraph 31 that I concur that
14:43:06 2 the Patent Board's interpretation of "at the
14:43:10 3 terminal end" is a reasonable one. And at the -- so
14:43:15 4 the Board's review at the terminal end did not
14:43:18 5 require placement of -- "placement of the first
14:43:21 6 aperture at the extreme proximal end of the third
14:43:24 7 member" in decision 16.

14:43:26 8 I agree with the Board's interpretation
14:43:28 9 because it is consistent with how a POSA in the art
14:43:32 10 would use the term "terminal end." And I have used
14:43:35 11 it here in paragraph 32 identifying 103 as the very
14:43:39 12 top of the terminal end does not limit the terminal
14:43:42 13 end to the top surface of the nail.

14:43:49 14 Q Right. But you don't -- you didn't cite to
14:43:51 15 anything after that sentence?

14:43:54 16 A Well, I include then after that sentence in
14:43:57 17 the following pages multiple POSAs identifying how
14:44:02 18 they call terminal end to include the sides of the
14:44:07 19 nail or parts of the nail, but not the very top of
14:44:14 20 the terminal end of the nail. So there are multiple
14:44:18 21 POSAs here cited as they -- so my main point is that
14:44:22 22 at the terminal end really has no intrinsic meaning
14:44:25 23 in the art. POSAs use the word terminal end in many
14:44:28 24 ways as cited in these examples of other POSA prior
14:44:35 25 arts. So there's no general understanding in the

14:44:37 1 field that that terminal end means the very top

14:44:40 2 surface of the object.

14:45:17 3 Q Let's turn to -- I have to send it to you

14:45:21 4 what's previously marked Exhibit 1044.

14:45:26 5 (Document marked previously as

14:45:26 6 Exhibit 1044 was presented.)

14:45:26 7 BY MR. KAMHOLZ:

14:45:27 8 Q Let me know once you've received it and have

14:45:31 9 it open.

14:45:31 10 A Okay, I've got it.

14:45:47 11 Q So keep that open and then let's also look

14:45:52 12 at your second declaration at paragraph 41.

14:46:02 13 A Okay.

14:46:02 14 Q In paragraph 41 you state, second sentence,

14:46:08 15 "Terminal end 406 refers to a hole region of the

14:46:12 16 drive shaft, whereas the end is referred to

14:46:15 17 separately by element 407 as shown in Figure 6." So

14:46:24 18 let's -- do you see that?

14:46:26 19 A Yes.

14:46:27 20 Q So let's take a look at Exhibit 1044, the

14:46:34 21 McKay reference. It's specifically at column 8,

14:46:38 22 lines 65 and 66.

14:46:44 23 A You said it's paragraph 8, line 65.

14:46:59 24 Q Column 8, but yes, line 65.

14:47:02 25 A Okay.

14:47:03 1 Q At line 65, there's a sentence starting
14:47:19 2 about -- a little past the middle. It reads, "The
14:47:22 3 terminal end 406 of the drive shaft 402 includes a
14:47:27 4 spacer engager 407."

14:47:38 5 Do you know what a spacer engager is?

14:47:42 6 A I don't recall addressing that in my
14:47:44 7 declaration.

14:47:45 8 Q Right. So in your declaration, you say the
14:47:50 9 end is referred to separately by element 407. And
14:47:54 10 we just read that element 407 is a spacer engager.
14:48:00 11 So what support do you have to suggest that the end
14:48:14 12 is referred to separately by element 407?

14:48:19 13 A In McKay's patent '528, he describes an
14:48:25 14 intervertebral bone spacer in which the thread
14:48:30 15 cutter 400 includes drive shaft 402 with terminal
14:48:32 16 end 406. 406 is the terminal end of 402. And
14:48:40 17 terminal end 406 refers to a whole region of the
14:48:44 18 drive shaft, whereas the end is referred to
14:48:48 19 separately by element 407. So 407 is the end of
14:48:54 20 that -- of that bore in the -- that the drive shaft
14:49:00 21 is in.

14:49:02 22 Q How did you reach that conclusion that 407
14:49:04 23 is the end?

14:49:06 24 A Well, there's nothing past it to the left of
14:49:09 25 it. There's nothing more but material. So 407 is

14:49:14 1 the end or the terminal end of that body.

14:49:22 2 Q What support do you have to support your
14:49:30 3 opinion that terminal end 406 refers to a whole
14:49:34 4 region of the drive shaft?

14:49:41 5 A The point that I'm making here is that
14:49:49 6 terminal end here can include the sides of the shaft
14:49:52 7 and is not limited to just the tip. So in my
14:49:55 8 opinion therefore, references in the art to
14:49:57 9 something being at the terminal end may mean that it
14:50:01 10 could be near the end since terminal end refers to
14:50:04 11 an entire region of the part. In this case,
14:50:08 12 terminal end is 406.

14:50:16 13 Q If we're looking at your declaration, your
14:50:22 14 annotated version of Figure 6 which is in
14:50:27 15 paragraph 41.

14:50:30 16 A Yes.

14:50:31 17 Q There's a line -- 406 is pointing to a line
14:50:38 18 on 402, is it not?

14:50:43 19 A 406 is -- refers to the whole region of the
14:50:46 20 drive shaft.

14:50:49 21 Q Actually it's touching that line though at
14:50:52 22 the end of 402?

14:50:57 23 A It is touching the end of the drive shaft,
14:51:00 24 but that's the region -- the end of the drive shaft.
14:51:03 25 So terminal end 406 refers to the whole region of

14:51:06 1 the drive shaft, whereas the end is referred to
14:51:12 2 separately by 407.

14:51:16 3 Q Well, we just read 407 is a spacer engager.
14:51:21 4 And by looking at Figure 6, would you agree that
14:51:26 5 it's added onto the end of 402?

14:51:32 6 A I don't recall addressing that in my
14:51:34 7 declaration.

14:51:37 8 Q Is 407 a separate component from 402?

14:52:04 9 A The end is referred to separately by element
14:52:07 10 407, so it is -- the end is separate than 406.

14:52:15 11 Q Where in McKay does 407 reference the end?

14:52:59 12 A If you go to Figure 6 and Figure 7 in the
14:53:57 13 patent, you'll see that McKay identifies 406 and 407
14:54:07 14 in Figure 6. If you look at the corresponding
14:54:10 15 Figure 7, 406 and 407, so 407 is -- is the end past
14:54:27 16 406. 406 -- the terminal end is 406 which refers to
14:54:31 17 the whole region of the drive shaft, whereas the end
14:54:34 18 is referred to separately as element 407 which is --
14:54:38 19 looks like a nipple, if you will, on the end. So
14:54:42 20 it's separated from element -- so terminal 406 is
14:54:45 21 the entire region -- is the distal region of the
14:54:48 22 drive shaft, whereas the end is referred to
14:54:50 23 separately by element 407.

14:54:54 24 Q Okay. Let's break that down. First, I just
14:55:02 25 want to confirm in paragraph 41, the term -- your

14:55:06 1 sentence "terminal end 406 refers to a whole region
14:55:10 2 of the drive shaft, whereas the end is referred to
14:55:13 3 separately by element 407 as shown below in
14:55:17 4 Figure" 7 -- "6." Excuse me.

14:55:19 5 A Correct.

14:55:20 6 Q You don't cite anywhere in McKay for that
14:55:22 7 statement, correct?

14:55:24 8 A No. That is my interpretation of McKay,
14:55:32 9 that terminal end 406 refers to the whole region of
14:55:35 10 the drive shaft, whereas the end is referred to
14:55:39 11 separately by element 407 as shown in Figure 6. So
14:55:42 12 that is my opinion.

14:55:45 13 Q Okay. Then down on column 8, line 65, it
14:56:08 14 says -- it calls 406 the terminal end, correct?

14:56:16 15 A Yes, that's what it says.

14:56:17 16 Q In that sentence, it doesn't say that 406
14:56:23 17 refers to a whole region of the drive shaft,
14:56:26 18 correct?

14:56:31 19 A The sentence reads, "The terminal end 406 of
14:56:38 20 the drive shaft 402 includes a spacer engager 407."

14:56:44 21 Q Okay. And in that same sentence, 407 is
14:56:49 22 called a spacer engager. Do you see that?

14:56:52 23 A That's what McKay calls it, yes.

14:56:55 24 Q Yes. And McKay doesn't call it the end of
14:57:03 25 402? That's not in that sentence, correct?

14:57:10 1 A Not in that particular sentence, no. That's
14:57:14 2 my opinion that the drive shaft 402 with terminal
14:57:22 3 end 406, the terminal end 406 refers to the whole
14:57:25 4 region of the drive shaft, whereas the end is
14:57:28 5 referred to separately by element 407 shown in
14:57:31 6 Figure 6.

14:57:32 7 Q Okay. We can put this reference to the
14:57:47 8 side. And let's turn back to your second
14:57:54 9 declaration which is Exhibit 1018 and turn to
14:58:00 10 paragraph 44. Let me know when you're there,
14:58:04 11 please.

14:58:04 12 A Yes, I'm on paragraph 44.

14:58:11 13 Q In the last sentence of paragraph 44 you
14:58:23 14 say, "It is reasonable to say that the contact
14:58:28 15 between the shoulder and the screw is at the first
14:58:33 16 aperture."

14:58:33 17 Do you see that?

14:58:35 18 A In the context of Cognet.

14:58:40 19 Q It is in the context of Cognet, yes.

14:58:44 20 A Yes, I see that.

14:58:45 21 Q You don't cite to any record evidence to
14:58:54 22 support that statement, would you agree? Or
14:58:59 23 correct?

14:59:00 24 A I formed this opinion after reviewing the
14:59:41 25 Cognet patent which looks -- that the shoulder in

14:59:47 1 Cognet is near the first aperture and it is
14:59:50 2 reasonable to say that the contact between the
14:59:51 3 shoulder and the screw is at this first aperture.

14:59:54 4 Q Right. But that sentence -- there's no cite
14:59:57 5 to any record evidence after that sentence, correct?

15:00:01 6 A Why don't we just defer to the Cognet patent
15:00:05 7 which does show figures that show proximity between
15:00:10 8 the shoulder and the screw as there is contact being
15:00:12 9 made there at the first aperture. That's how I draw
15:00:16 10 my opinion on that.

15:00:18 11 Q What evidence do you have to make the
15:00:42 12 opinion that it is reasonable to say that the
15:00:46 13 contact between the shoulder and the screw is at the
15:00:50 14 first aperture?

15:00:54 15 A In view of Cognet's patent, the figures that
15:00:58 16 he introduces there visually indicate that the head
15:01:03 17 of the screw is in the first aperture and making
15:01:08 18 contact within that aperture.

15:01:13 19 Q To you?

15:01:15 20 A Yes.

15:01:15 21 Q One sentence above that one that we were
15:01:45 22 just discussing, you state, "The shoulder in Cognet
15:01:49 23 is near the first aperture."

15:01:55 24 Do you see that?

15:01:58 25 A Yes, I see that sentence.

15:02:00 1 Q Again, that's your opinion without a cite to
15:02:05 2 any record evidence?

15:02:07 3 A Well, the record evidence is Cognet's patent
15:02:11 4 and his figures in his patents, figures --
15:02:14 5 specifically figures -- Figure 1.

15:02:19 6 Q So it's your opinion that the shoulder in
15:02:22 7 Cognet is near the first aperture, but you haven't
15:02:27 8 cited to anything, correct, to support that opinion?
15:02:31 9 There's no cite there.

15:02:36 10 A I don't recall addressing that in my
15:02:38 11 declaration, in this declaration.

15:02:41 12 Q I'm going to share my screen. I'll also
15:02:56 13 send what I've marked as new Exhibit 2028 to you,
15:03:02 14 Mr. Dominguez, but I'll share it too because I think
15:03:05 15 it will be helpful that way as well.

15:03:08 16 (Exhibit 2028 marked for identification.)

15:03:22 17 BY MR. KAMHOLZ:

15:03:23 18 Q Let me know if you can see what I'm sharing.

15:03:27 19 A Yes, I see that.

15:03:29 20 Q I'm representing to you that this image was
15:03:33 21 taken directly from paragraph 75 of your first
15:03:38 22 declaration submitted in this proceeding which is
15:03:43 23 Exhibit 1002. Would you agree with that?

15:03:48 24 A Yeah, I mean it looks familiar from
15:03:50 25 Exhibit 1002. I would have to -- I don't have it

15:03:54 1 with me, but it does look like an exhibit from a
15:03:58 2 prior declaration.

15:04:05 3 MR. KAMHOLZ: It appears to me to be
15:04:07 4 enlarged in size, but otherwise I agree.

15:04:10 5 MR. FERRARO: I think that's correct, Scott.
15:04:12 6 It is enlarged, but it's the same.

15:04:16 7 BY MR. FERRARO:

15:04:18 8 Q Is it fair to say that the image that I'm
15:04:19 9 showing accurately represents, Mr. Dominguez, your
15:04:25 10 statement in paragraph 44 that the head of the --
15:04:43 11 strike that. Hold on.

15:04:58 12 So is it fair to say that the image on the
15:05:00 13 screen accurately represents your statement in
15:05:03 14 paragraph 44 that it's reasonable to say -- this is
15:05:08 15 in quotes -- that "it is reasonable to say that the
15:05:10 16 contact between the shoulder and the screw is at the
15:05:12 17 first aperture"?

15:05:16 18 A Yeah, as I stated in paragraph 44 of my
15:05:20 19 declaration, the shoulder in Cognet is near the
15:05:24 20 first aperture. It is reasonable to say that the
15:05:27 21 contact between the shoulder and the screw is at the
15:05:30 22 first aperture.

15:05:34 23 Q Right. So in other words, in your opinion,
15:05:43 24 does this image show that Cognet anticipates
15:05:48 25 claims 3 and 7? Is that your position?

15:05:52 1 A Yes, Cognet's screw head abuts the first
15:06:05 2 aperture and it is reflective of claims 3 and 7.

15:06:27 3 Q So just to confirm, it's these green arrows
15:06:34 4 that you're showing is the abutting the first
15:06:37 5 aperture, correct, at the shoulder?

15:06:41 6 A Keep in mind that this is a cross-section of
15:06:45 7 just the nail and screw through one plane. But this
15:06:50 8 is really spun about the axis of the screw. So what
15:06:56 9 you really have is a -- is a full circle -- a full
15:07:03 10 circular contact of the head abutting the aperture.
15:07:05 11 It's a full surface -- circular surface of contact,
15:07:11 12 not just -- not just a point at the end of green
15:07:16 13 arrow 1 and the end of green arrow 2. It is
15:07:21 14 actually a full surface contact inside the --
15:07:23 15 between the head and that first aperture.

15:07:26 16 Q Right. Understood. But the point is the
15:07:30 17 point of contact is where the arrows are; that's
15:07:33 18 where you're saying the abutting is happening,
15:07:36 19 correct?

15:07:36 20 A Yeah, in my opinion that's where it's
15:07:38 21 occurring, yes.

15:07:39 22 Q Okay. I'm going to put this to the side.
15:07:45 23 I'm going to stop sharing for a moment. And then
15:07:51 24 I'm going to do -- I'm going to send what I've
15:07:57 25 marked as new Exhibit 2029.

15:08:01 1 (Exhibit 2029 marked for identification.)

15:08:01 2 BY MR. FERRARO:

15:08:12 3 Q I'll also share my screen here. Confirm you

15:08:33 4 can see my screen and you have the exhibit.

15:08:35 5 A Yes, I can it and I can see it.

15:08:37 6 Q Okay. Again I'll represent to you that this

15:08:41 7 image was taken directly from paragraph 57 of your

15:08:45 8 first declaration, which is Exhibit 1002. Again, it

15:08:53 9 is blown up slightly.

15:08:56 10 A Okay. I see it.

15:08:57 11 Q So is it fair to say that in your opinion,

15:09:02 12 this image shows that Cognet has a first aperture at

15:09:07 13 a terminal end as recited in claim 1 of the '166

15:09:12 14 patent?

15:09:12 15 A That is my understanding, yes.

15:09:14 16 Q And that in this image, you're referring to

15:09:17 17 the first aperture at the top of the bore?

15:09:31 18 A Yeah, the first aperture is indicating the

15:09:36 19 end of the bore -- the end of the -- is the opening

15:09:40 20 -- or the aperture is the first opening into the

15:09:43 21 bore at the first -- at the first terminal end.

15:09:49 22 Q Where that red circle is?

15:09:52 23 A Yeah, that is the aperture.

15:09:54 24 Q Okay. Actually I'd like to take a

15:10:09 25 five-minute break if we can.

15:10:13 1 (Short recess.)

15:14:48 2 BY MR. FERRARO:

15:15:03 3 Q Mr. Dominguez, I'm going to send you what
15:15:07 4 I've marked as new Exhibit 2030.

15:15:12 5 (Exhibit 2030 marked for identification.)

15:15:18 6 BY MR. FERRARO:

15:15:19 7 Q I'm also going to open it up on my end and
15:15:22 8 share my screen. I think it will just be easier to
15:15:27 9 talk it through that way. Let me know once you see
15:15:38 10 it.

15:15:40 11 A I see Figure 18.

15:15:42 12 Q Okay. So Exhibit 2030, I'll represent to
15:15:54 13 you, is an annotated version of Figure 18 of the
15:15:58 14 '166 patent. Do you agree that this is the
15:16:02 15 Figure 18 from the '166 patent?

15:16:05 16 A Yes, that appears to be Figure 18 of the
15:16:08 17 '166 patent.

15:16:09 18 Q Do you see the element in green on the
15:16:21 19 annotated figure?

15:16:23 20 A Yeah, I see the line in green.

15:16:27 21 Q Yes. Would you agree that the element shown
15:16:30 22 in green is an aperture that is at the top surface
15:16:34 23 of the terminal end of member 1815 and a portion of
15:16:39 24 the side exterior surface of member 1815?

15:16:44 25 A I don't recall specifically addressing that

15:16:46 1 in my declaration.

15:16:50 2 Q You've seen Figure 18 before, correct?

15:17:01 3 A I've seen it in the past, yes.

15:17:03 4 Q Okay. So and maybe it will be helpful to
15:17:16 5 have Exhibit -- or the patent rather up as well. So
15:17:22 6 let me pull that up a second. Just give me one
15:17:25 7 second.

15:17:25 8 (Document marked previously as
15:17:25 9 Exhibit 1001 was presented.)

15:17:25 10 BY MR. FERRARO:

15:17:56 11 Q So this is -- you'll agree that what I'm
15:18:00 12 showing you is Exhibit 1001, the '166 patent from
15:18:06 13 this proceeding?

15:18:07 14 A Yes, I agree with that. I agree that that
15:18:10 15 is patent '166.

15:18:12 16 Q I'm scrolling down to Figure 18. You're
15:18:20 17 familiar with Figure 18 of the '166 patent?

15:18:22 18 A Yes, I am.

15:18:23 19 Q So what I'm asking you is is this aperture
15:18:42 20 where my mouse is and where the green is on this
15:18:45 21 Figure 18, is that an aperture that's on the top
15:18:52 22 surface of member 1815 as well as on the side
15:18:58 23 surface -- side exterior surface of the same member?

15:19:04 24 A Yeah, I see the -- I see the opening in
15:19:08 25 green indicating part of it is on the top surface,

15:19:12 1 part of it is on the side surface of the nail.

15:19:20 2 Q Would you agree that what -- you see a red
15:19:26 3 component -- I'm sorry -- a red annotation on
15:19:31 4 Figure 18?

15:19:32 5 A I see that. I see that.

15:19:33 6 Q And that's on Exhibit 2030?

15:19:37 7 A Yeah, I see the red mark.

15:19:40 8 Q Okay. Would you agree that the element
15:19:43 9 shown in red is an aperture on the side exterior
15:19:45 10 surface of member 18?

15:19:47 11 A That is not described, to my knowledge, in
15:20:00 12 the -- in patent '166 and I certainly did not recall
15:20:05 13 addressing that in my declaration.

15:20:07 14 Q Would you agree that there is an aperture on
15:20:11 15 that side surface such that a nail is -- you see a
15:20:17 16 nail coming through it? Just the existence of the
15:20:24 17 aperture, would you agree that an aperture exists
15:20:30 18 there or a hole?

15:20:33 19 A Yeah, just strictly -- strictly from this
15:20:36 20 figure it is hard to see that because it's very
15:20:40 21 ambiguous what that really represents. But you
15:20:43 22 could see that there's something coming out of that
15:20:45 23 red line. And from this -- from this particular
15:20:48 24 perspective, it's hard to see that indeed the screw
15:20:50 25 is going through and passing past that red line

15:20:55 1 you're calling an aperture, but it's hard to see.
15:20:58 2 It's somewhat ambiguous. But I don't know what more
15:21:03 3 you want me to say.

15:21:04 4 Q Putting the red annotation aside and just
15:21:09 5 looking at the actual Figure 18 -- maybe the red is
15:21:12 6 doing more harm than good here -- there is an
15:21:16 7 aperture -- would you agree there's an aperture on
15:21:21 8 member 1815 such that there's a screw going through
15:21:26 9 it?

15:21:28 10 A I don't recall addressing that in this -- in
15:21:31 11 this declaration that I've prepared.

15:21:35 12 Q Okay. Would you agree that what this --
15:21:57 13 there's -- do you see a blue annotation on
15:22:01 14 Exhibit 2030?

15:22:03 15 A I see a blue arrow at the top of Figure 18.

15:22:06 16 Q Okay. Would you agree that from the -- in
15:22:13 17 between the first -- the aperture highlighted in
15:22:16 18 green and the aperture highlighted in red, there's a
15:22:20 19 bore between those two?

15:22:25 20 A I can't really see what's going on inside
15:22:28 21 the part because it is a solid surface, so I really
15:22:31 22 don't have -- I don't recall addressing that in my
15:22:34 23 declaration.

15:22:36 24 Q Okay. You'll agree though there's a screw
15:22:41 25 that starts from the aperture being designated by

15:22:46 1 the -- annotated by green and goes through nail 1815
15:22:55 2 or member 1815 and comes out another aperture? Do
15:23:02 3 you see that?

15:23:02 4 A Yeah, as I stated earlier, based on this
15:23:05 5 perspective, which is really like an isometric
15:23:08 6 perspective looking -- favoring more the back of the
15:23:10 7 screw, it's hard to tell how it actually does pass
15:23:14 8 through, how this bone screw does pass through the
15:23:18 9 nail from this view without really having more
15:23:22 10 clarity as to what's taking place there
15:23:25 11 geometrically speaking. So it's somewhat ambiguous
15:23:29 12 as to how this passage is taking place in my
15:23:34 13 opinion.

15:23:35 14 Q Okay. But there's a space between --
15:23:39 15 there's a space there, right, because that's how the
15:23:41 16 nail is going from one end to the other? Can we
15:23:45 17 agree to that?

15:23:46 18 Putting the geometry aside of what's going
15:23:48 19 on inside, there's an open space between those two
15:23:55 20 -- the top surface and that side surface?

15:23:58 21 A Yeah, I just don't recall addressing that in
15:24:00 22 my declaration.

15:24:02 23 Q Okay. Let's move on. I'm going to stop
15:24:15 24 sharing. And we can put these exhibits away. I'm
15:24:28 25 going to send you what's been previously marked as

15:24:31 1 Exhibit 1008, the Simon reference in this
15:24:36 2 proceeding.
15:24:37 3 (Document marked previously as
15:24:39 4 Exhibit 1008 was presented.)
15:24:39 5 BY MR. FERRARO:
15:24:55 6 Q Let me know once you've -- you have it open.
15:24:59 7 A Okay, I've got it open.
15:25:00 8 Q Will you agree that this is the Simon
15:25:05 9 reference which is Exhibit 1008 in this proceeding?
15:25:08 10 A Yep, this is Simon patent application ending
15:25:12 11 in '044 that is the Simon reference.
15:25:15 12 Q Have you reviewed this reference before?
15:25:21 13 A Yes, I have.
15:25:21 14 Q Let's turn to Figure 1.
15:25:31 15 A Okay.
15:25:31 16 Q Is fastener 20 -- first of all, you see
15:25:41 17 fastener 20?
15:25:43 18 A Yes.
15:25:43 19 Q Is fastener 20 shown to be fully sunk into
15:25:50 20 the bone there?
15:25:53 21 A Granted it is a pretty crude hand drawn --
15:25:58 22 hand drawing, but from this view, fastener 20 is
15:26:07 23 shown in close approximation, if not in contact with
15:26:13 24 the nail at 20.
15:26:17 25 Q I'm not sure I'm following your answer so

15:26:41 1 maybe I'll ask it again and we'll go from there.

15:26:47 2 So my question was is fastener 20, which is
15:26:51 3 shown in Figure 1, is it shown to be fully sunk into
15:26:58 4 the bone there?

15:27:01 5 A I mean, Simon is disclosing to us a screw
15:27:05 6 that can be used as a locking screw, as interlocking
15:27:10 7 cortical screws or transfixation screws. And he
15:27:17 8 really hasn't defined whether he has a head portion
15:27:21 9 or not, but it can be a bulbous portion or a portion
15:27:24 10 that is partially bulbous or a non-bulbous portion.
15:27:27 11 And it can be a portion of the screw that accepts
15:27:30 12 torque forces from driving tools. And Simon in
15:27:33 13 Figure 1 illustrates screws and they have a head
15:27:36 14 portion even though a bulbous portion is not
15:27:41 15 indicated. As previously mentioned, headless screws
15:27:45 16 must have a torque transmitting aperture and they
15:27:48 17 don't necessarily need to have a bulbous portion to
15:27:51 18 indicate that it's sunk against a screw or sunk
15:27:56 19 against the nail.

15:27:59 20 Q Are you reading from somewhere?

15:28:02 21 A I'm reading from my declaration.

15:28:04 22 Q Which paragraph?

15:28:06 23 A Paragraph 53.

15:28:11 24 Q Okay. I don't think that was responsive to
15:28:23 25 my question. My question is sort of much simpler

15:28:26 1 than sort of regurgitating what's your paragraph 53.

15:28:30 2 I'm just wondering whether fastener 20 is
15:28:37 3 completely sunk in the bone that's in the big toe
15:28:41 4 bone that's shown in Figure 1 of Simon?

15:28:45 5 A Yeah, I don't recall addressing that in my
15:28:47 6 declaration.

15:28:49 7 Q Okay. I'm going to share my screen. So
15:29:02 8 I'll represent that this is Simon. I'll make it
15:29:06 9 clear that it is in a moment.

15:29:08 10 So this is Simon, Exhibit 1008. I'm going
15:29:11 11 to scroll down to Figure 1, which is what we're
15:29:15 12 discussing, and I'm going to zoom in very closely on
15:29:19 13 fastener 20. Can you see that?

15:29:24 14 A Yeah, I see it.

15:29:25 15 Q Fastener 20 is shown on the screen and the
15:29:33 16 question is is fastener 20 sunk within -- completely
15:29:37 17 within the bone?

15:29:42 18 A Like I said, I really don't recall
15:29:50 19 addressing that in my declaration whether Simon's
15:29:53 20 fastener is in the bone, as you state.

15:29:57 21 Q Well, what do you see on the screen here?
15:30:01 22 Sorry. I keep jumping around. I'm trying to get to
15:30:04 23 the right magnification.

15:30:06 24 Do you recognize it clearly?

15:30:07 25 A Yes, but again, I don't recall addressing

15:30:09 1 that in my declaration.

15:30:11 2 Q Right. I'm not asking about what's your
15:30:13 3 declaration. I'm asking you to just look at Simon.
15:30:17 4 You've talked about Simon at length throughout this
15:30:20 5 proceeding. You've reviewed it. It's one of the
15:30:23 6 grounds -- it's one of the references used as a
15:30:26 7 grounds for invalidity in this case. I'm assuming
15:30:33 8 you've read it closely and so you know it well.

15:30:36 9 And the question is a simple one, from this
15:30:39 10 figure, can you see, using your eyes, is fastener 20
15:30:48 11 fully sunk in the bone?

15:30:51 12 A My interpretation of Simon Figure 1
15:30:54 13 illustrates screws that have a head portion even
15:30:57 14 though a bulbous portion is not indicated. So to
15:31:02 15 me, Simon has a head portion and that is -- that
15:31:06 16 head portion is shown there with respect to the
15:31:11 17 nail.

15:31:14 18 Q I don't think in my question I mentioned a
15:31:21 19 head or a head portion at all. Sandra, can you
15:31:26 20 repeat my -- you know what, it was a long question
15:31:29 21 so forget it. But I'll just -- point taken or point
15:31:34 22 being is we're not talking about the head here.
15:31:38 23 We're just talking about whether the screw -- the
15:31:40 24 fastener that's shown as 20 is fully sunk in the
15:31:46 25 toe. If you're unwilling to answer that, that's

15:31:50 1 fine. But that's the question.

15:31:52 2 A I mean, I don't recall addressing that in my
15:31:54 3 declaration.

15:31:55 4 Q Okay. We can move on. In your opinion,
15:32:44 5 what's the difference between a headless screw and a
15:32:48 6 screw with a head?

15:33:26 7 A A screw with a head, therefore, can be a --
15:33:30 8 can have or be a bulbous portion or portion that is
15:33:34 9 partially bulbous or even a non-bulbous portion. It
15:33:38 10 can be the portion of the screw that accepts torque,
15:33:43 11 which is what we're calling -- the part of the screw
15:33:46 12 that accepts the torque forces from the driving
15:33:49 13 tools are what we're calling these head or bulbous
15:33:53 14 portions of the screw.

15:33:54 15 Simon, in Figure 1, for example, illustrates
15:33:57 16 screws and they have a head portion even though a
15:34:01 17 balloon portion is not indicated. So screws can
15:34:06 18 have bulbous portions, they can have partially
15:34:11 19 bulbous portions, or they can have non-bulbous
15:34:14 20 portions, but it is -- the head in general is what
15:34:16 21 is referred to the section that is being used to
15:34:20 22 drive or torque the screw into bone. Excuse me.

15:34:33 23 Q So is it your opinion that a screw with a
15:35:43 24 head portion can have a bulbous portion, a partially
15:35:48 25 bulbous portion, or a non-bulbous portion and still

15:35:52 1 have a head portion?

15:35:56 2 A My opinion is that it can still be
15:35:58 3 considered a head portion because it would have an
15:36:02 4 aperture on the head and that portion of the
15:36:05 5 headless screw, or whether it was bulbous or
15:36:08 6 partially bulbous or headless, that aperture
15:36:12 7 contains -- that contains the aperture that would be
15:36:14 8 considered to be the head portion of the screw.

15:36:41 9 MR. FERRARO: Sandra, can you read that
15:36:42 10 answer back?

15:37:08 11 (Record read as requested.)

15:37:13 12 BY MR. FERRARO:

15:37:14 13 Q So then what would you say a headless screw
15:37:17 14 is? What's the distinction between a headless screw
15:37:21 15 and a screw with a head portion that you're making
15:37:26 16 here?

15:37:27 17 A Well, what I'm saying here is that the screw
15:37:33 18 head -- the screw head could have a bulbous portion,
15:37:39 19 it could be partially bulbous, or it may have a
15:37:42 20 non-bulbous portion. So if it's a non-bulbous
15:37:45 21 portion, there's nothing there that is larger than
15:37:48 22 the rest of the screw, then that's what I would
15:37:51 23 consider to be a headless screw. So whether it's a
15:37:55 24 bulbous screw, a bulbous head screw, or a partially
15:37:58 25 bulbous head screw, or a non-bulbous head screw,

15:38:01 1 they're all screws. And the part deemed to be
 15:38:04 2 called the head of those screws, regardless of what
 15:38:09 3 shape it has, that aperture on the head and that
 15:38:13 4 portion of the headless screw contains the aperture
 15:38:16 5 that would be considered the head portion of that
 15:38:19 6 screw.

15:38:36 7 MR. FERRARO: Okay. I actually -- let me
 15:38:38 8 take five-minute break. I'm almost done, Scott. So
 15:38:41 9 I think after this break it will probably be another
 15:38:44 10 five or ten minutes and then we can call it or you
 15:38:47 11 can redirect as you see fit.

15:38:49 12 (Short recess.)

15:42:24 13 BY MR. FERRARO:

15:42:31 14 Q So we're back on. Mr. Dominguez, let's turn
 15:42:35 15 to your second declaration, Exhibit 1018. And what
 15:42:44 16 I'm -- I'll direct you to paragraph 54.

15:42:49 17 A Okay.

15:42:49 18 Q In paragraph 54, you're showing -- you're
 15:42:59 19 displaying three types of screws, correct?

15:43:04 20 A That is correct. In figure -- Figure 11,
 15:43:08 21 Figure 1 and Figure 5.

15:43:11 22 Q Right. Figure 11 of the '166 patent,
 15:43:14 23 Figure 1 of Simon, and Figure 5 of Chang, correct?

15:43:18 24 A Yes.

15:43:19 25 Q Okay. Is it fair to say that while you've

15:43:26 1 shown them all to be the same size, they're actually
15:43:28 2 very different in size? Would you agree to that?

15:43:31 3 A Yeah, I would agree that they have been
15:43:35 4 shrunk or lengthened, whatever, to make them look of
15:43:38 5 a similar length.

15:43:40 6 Q Okay. Particularly Figure 11 of the '166
15:43:51 7 patent would you agree is depicting a screw that is
15:43:57 8 substantially smaller than the Simon Figure 1 nail
15:44:03 9 and the Chang Figure 5 nail?

15:44:05 10 A I don't think I recall addressing that in my
15:44:09 11 declaration as concerning size.

15:44:11 12 Q No. I mean, it's not in your declaration.
15:44:14 13 It's just a question as to facts here.

15:44:21 14 Is the screw in Figure 11 smaller than the
15:44:26 15 nail of Simon -- shown in Simon's Figure 1?

15:44:31 16 A I mean, it's hard to compare because they're
15:44:33 17 all at different scales. But what I can say is that
15:44:36 18 the figure in 11 is of the right perspective and
15:44:40 19 scale as provided in Figure 11. And the Figure 1 is
15:44:46 20 of the scale, relatively speaking, to its own
15:44:51 21 figure. So those figures are to the scale that --
15:44:55 22 in which they were presented in their -- in their
15:44:58 23 patents. But I did not -- I am not saying that all
15:45:04 24 of these three nails are of the same length.

15:45:08 25 Q Okay.

15:45:15 1 A In other words, relative to each other,
15:45:17 2 relative to its own illustration, that is of the
15:45:20 3 right scale for that illustration.

15:45:23 4 Q Yeah. To itself it's relative, but not
15:45:27 5 relative to each other? They're different scales
15:45:31 6 from say Figure 11 of '166 and Simon Figure 1,
15:45:38 7 they're on two different scales?

15:45:41 8 A Yeah, I mean, I don't recall addressing in
15:45:43 9 my declaration what scales they're at, but...

15:45:46 10 Q Sure.

15:45:46 11 A That's -- they're -- certainly individually
15:45:50 12 on its own merit, each figure here represents its
15:45:55 13 unique geometry.

15:45:56 14 Q Okay. Do you recall where the screw in
15:46:06 15 Figure 11 of the '166 patent is inserted, what bone
15:46:14 16 or thereabouts?

15:46:17 17 A I don't recall addressing that in my
15:46:19 18 declaration.

15:46:20 19 Q Okay. I'm going to share my screen here
15:46:50 20 which will show an exhibit -- will show Exhibit 10
15:46:57 21 -- actually, Exhibit 1001. Let me know when you can
15:47:04 22 see it.

15:47:10 23 A I see.

15:47:11 24 Q So you'll this is Exhibit 1001 in this
15:47:17 25 proceeding and it's the '166 patent?

15:47:19 1 A Yes.

15:47:19 2 Q I'm going to scroll down to Figure 11. This

15:47:26 3 is the figure that you inserted into your

15:47:30 4 paragraph 54, is that correct?

15:47:30 5 A That is correct.

15:47:31 6 Q And it's screw member 810?

15:47:36 7 A Yes.

15:47:37 8 Q And I've turned to Figure 8 of the same

15:47:46 9 patent. And do you see component or screw 810 in

15:47:51 10 Figure 8?

15:47:52 11 A Yes, I do.

15:47:53 12 Q And where is figure -- where is component

15:47:57 13 810 or screw 810 inserted in the bone or what bone

15:48:03 14 is that?

15:48:03 15 A It's inserted in the calcaneus.

15:48:06 16 Q Which is where?

15:48:08 17 A That's 820.

15:48:11 18 Q Yes, 820. Where is that in the body?

15:48:15 19 A That's the heel of your foot.

15:48:17 20 Q Okay. And roughly where is it showing 810

15:48:23 21 ends? So it goes from the heel and where does it

15:48:27 22 end?

15:48:28 23 A It ends at 830.

15:48:30 24 Q Yeah. Do you know what bone that is or what

15:48:33 25 section of the foot that would be considered?

15:48:36 1 A I don't recall addressing that in my
15:48:39 2 declaration.

15:48:42 3 Q No. I'm just asking you to look at Figure 8
15:48:45 4 and tell me where approximately where that screw is
15:48:49 5 ending?

15:48:53 6 A Like I said, I don't recall addressing that
15:48:55 7 in the declaration, but it is pointing towards 830.

15:48:59 8 Q Okay. Do you know what 830 is?

15:49:01 9 A I don't recall addressing that in my
15:49:03 10 declaration.

15:49:03 11 Q Do you see the screen -- do you still see my
15:49:56 12 screen?

15:49:57 13 A Yes. Yes, I can.

15:49:58 14 Q Okay. So in column 8 of the '166 patent at
15:50:04 15 approximately line 17, it says, 830 is the cuboid
15:50:13 16 bone. Do you know how to say that?

15:50:15 17 A Cuboid bone.

15:50:16 18 Q Will you agree or do you see that 830 is the
15:50:19 19 cuboid bone?

15:50:20 20 A That's what I see written.

15:50:21 21 Q Okay. So go back up to Figure 8. Where
15:50:32 22 approximately is the cuboid bone in the foot?

15:50:37 23 A I don't recall addressing that in my
15:50:39 24 declaration.

15:50:39 25 Q Do you know where it is as an expert in the

15:50:43 1 field?

15:50:44 2 A Figure 8 represents the foot, so that's --
15:50:50 3 those are the bones of the feet from a top view, but
15:50:54 4 I don't recall addressing in my declaration what the
15:50:58 5 bones are.

15:51:00 6 Q Are you familiar with where the cuboid bone
15:51:03 7 is in the foot?

15:51:06 8 A It's shown approximately at position 830 as
15:51:10 9 shown in Figure 8.

15:51:12 10 Q Right. But do you know where it is in the
15:51:17 11 foot outside of what's shown in the patent?

15:51:20 12 A I don't recall addressing that in my
15:51:22 13 declaration.

15:51:23 14 Q You're an expert in the field?

15:51:32 15 A I believe so, yes.

15:51:34 16 Q You've worked in the past on -- with medical
15:51:40 17 devices in connection with feet?

15:51:42 18 A Yes, I have.

15:51:43 19 Q You've heard of the cuboid bone prior to our
15:51:48 20 discussion today?

15:51:52 21 A I don't recall addressing that in my
15:51:54 22 declaration.

15:51:55 23 Q Have you heard of the cuboid bone?

15:51:59 24 A I don't recall addressing that in my
15:52:01 25 declaration.

15:52:01 1 Q So you haven't heard of the cuboid bone?

15:52:09 2 A I don't recall addressing that in my
15:52:10 3 declaration.

15:52:12 4 Q Are you unwilling to testify as to your
15:52:17 5 knowledge in the field about where certain bones are
15:52:23 6 in the feet?

15:52:27 7 A I will answer your questions fully and to
15:52:29 8 the best of my ability, but I don't recall
15:52:30 9 addressing that in my declaration.

15:52:32 10 Q No, you didn't. We're in agreement. I'm
15:52:36 11 just asking you as an expert in the field of medical
15:52:40 12 devices, implant devices into bones of humans,
15:52:49 13 you're an expert on medical devices, is that
15:52:54 14 correct?

15:52:54 15 A I don't recall addressing that specifically
15:52:57 16 in my declaration, but I do have a CV that I have
15:52:59 17 provided.

15:53:00 18 Q Okay. So you can't answer whether you're an
15:53:04 19 expert in the field because you didn't -- you didn't
15:53:11 20 address it in your declaration, you can't answer
15:53:14 21 whether you're an expert in the field?

15:53:21 22 A I consider myself to have enough experience
15:53:23 23 to be able to consider myself an expert in the
15:53:27 24 field, but I do not recall addressing that specific
15:53:31 25 question in my declaration.

15:53:32 1 Q Okay. Will you agree that screw 810 -- or
15:53:48 2 do you see that screw 810 goes from approximately
15:53:51 3 the heel to just before the phalange bones in the
15:54:02 4 foot in Figure 8 of the '166 patent?

15:54:05 5 A Yes, I see the position of screw 810 within
15:54:10 6 the bones of the foot.

15:54:10 7 Q Okay. As I described them?

15:54:14 8 A Yes.

15:54:15 9 Q Okay. Let's take a look at Simon. You'll
15:54:40 10 agree that this is the Simon reference,
15:54:43 11 Exhibit 1008?

15:54:45 12 A Yes, yes.

15:54:51 13 Q Then if we look at Figure 1 of Simon, can
15:54:57 14 you describe where nail 10 starts and finishes in
15:55:04 15 the foot?

15:55:16 16 A I don't recall addressing that in my
15:55:18 17 declaration.

15:55:25 18 Q Would you agree that nail 10 starts
15:55:29 19 approximately in the big toe of the foot shown in
15:55:38 20 Figure 1 of Simon?

15:55:40 21 A Based on the appearance of Figure 1, Simon's
15:55:53 22 implant appears to enter -- is in the foot. But
15:55:59 23 beyond that, I don't recall addressing that in my
15:56:02 24 declaration.

15:56:02 25 Q Okay. So just looking at these two

15:56:08 1 side-by-side, Figure 1 from Simon and Figure 8 from
15:56:13 2 the '166 patent, would you agree that the nail of
15:56:19 3 Simon is larger than the screw 810 of the '166
15:56:29 4 patent?

15:56:30 5 A I don't recall addressing that in my
15:56:33 6 declaration.

15:56:34 7 Q What do your eyes tell you?

15:56:40 8 A Figure 8 and Figure 1 are of different
15:56:45 9 scales. I can't tell -- you know, they're at
15:56:48 10 different -- they have different magnifications.
15:56:51 11 They have different scales. So I do not recall
15:56:53 12 addressing the relative size of these implants in my
15:56:56 13 declaration.

15:56:58 14 Q Is it your opinion that screw 810 of the
15:57:05 15 '166 patent and nail 10 of the Simon reference are
15:57:12 16 the same size?

15:57:15 17 A I don't have an opinion on that and do not
15:57:18 18 recall addressing that in my declaration.

15:57:20 19 Q Okay. Even sitting here today looking at
15:57:28 20 these figures, seeing where they are in the foot, do
15:57:33 21 you have an opinion now as to whether screw 810 in
15:57:42 22 the '166 patent is the same size as nail 10 of the
15:57:48 23 Simon reference?

15:57:51 24 A I don't recall addressing that in my
15:57:54 25 declaration.

15:57:54 1 Q Do you have an opinion of that now?

15:57:59 2 A No, I don't recall addressing that in my

15:58:02 3 declaration.

15:58:02 4 Q I'm going to pull up the Chang reference

15:58:17 5 which is Exhibit -- I'll show you the front page

15:58:24 6 here. It's Exhibit 2014.

15:58:32 7 A I see it.

15:58:32 8 (Document marked previously as

15:58:32 9 Exhibit 2014 was presented.)

15:58:34 10 BY MR. FERRARO:

15:58:34 11 Q You agree that's the Chang reference in this

15:58:36 12 proceeding?

15:58:36 13 A Yes, yes I do.

15:58:37 14 Q Okay. Looking at your paragraph 54, you've

15:58:45 15 identified the nail from Figure 5 of Chang, is that

15:58:53 16 right?

15:58:53 17 A That nail 10 in Figure 5 is the same

15:59:01 18 Figure 5 in my paragraph 54 of my declaration minus

15:59:07 19 the screws 12 or 112.

15:59:11 20 Q Okay.

15:59:12 21 A Minus -- pardon -- minus the screws 11 and

15:59:16 22 the screw at 12.

15:59:18 23 Q Okay. But that's the same nail 10?

15:59:21 24 A Yes. That is the same nail, Figure 5, that

15:59:25 25 I have shown in my declaration paragraph 54.

15:59:28 1 Q Would you agree that nail 10 in Chang is in
15:59:50 2 the femur bone of a human?

15:59:56 3 A I do not recall addressing where that nail
15:59:59 4 was in my declaration.

16:00:02 5 Q I re-presented Chang, which is Exhibit 2014
16:00:47 6 back onto the screen. Do you see that?

16:00:49 7 A Yes.

16:00:50 8 Q The title here says "Targeting apparatus
16:00:54 9 connecting to locking nails for the correction and
16:00:57 10 fixation of femur deformity of a child."

16:01:00 11 Do you see that?

16:01:01 12 A Yes, I do.

16:01:01 13 Q Is it fair to assume that -- strike that.

16:01:11 14 Is it your understanding then that nail 10
16:01:13 15 is in the femur?

16:01:21 16 A I do not recall addressing that in my
16:01:24 17 declaration.

16:01:25 18 Q Did you review Chang in connection with your
16:01:30 19 declaration?

16:01:30 20 A Yes, I have.

16:01:32 21 Q So you address Chang in your declaration?

16:01:41 22 A I addressed Chang in paragraph 54 showing
16:01:46 23 Figure 5.

16:01:48 24 Q And in doing so, you didn't determine what
16:01:57 25 bone the Chang nail that you've illustrated in 54

16:02:01 1 goes into?

16:02:03 2 A I don't recall addressing that in my
16:02:05 3 declaration.

16:02:06 4 Q Well, having seen the title of Chang, do you
16:02:16 5 agree that Chang is directed to correcting
16:02:22 6 deformities in a femur?

16:02:26 7 A I don't recall addressing that in my
16:02:30 8 declaration.

16:02:32 9 Q Okay. Do you see in the abstract a
16:02:39 10 targeting apparatus -- it says -- sorry, the
16:02:44 11 apparatus says a targeting apparatus -- no, the
16:02:47 12 abstract says, "A targeting apparatus for the
16:02:50 13 correction of the deformity in proximal femur of a
16:02:55 14 child."

16:02:56 15 Do you see that?

16:02:57 16 A I see -- I see what's written there, yes.

16:03:00 17 Q And you're unwilling to testify that the
16:03:07 18 nail 10 is in a femur, is that right?

16:03:13 19 A I mean, in Chang's patent, he describes the
16:03:16 20 application of this implant for that purpose, but I
16:03:20 21 do not recall addressing what that purpose is in my
16:03:23 22 declaration.

16:03:24 23 Q Okay. But you acknowledge that Chang's
16:03:29 24 purpose is correcting deformities in a femur,
16:03:33 25 correct?

16:03:34 1 A I acknowledge what is written on the
16:03:37 2 abstract, that it is a device used for the femur.
16:03:41 3 But again, I do not recall addressing that in my
16:03:44 4 declaration. I'm just acknowledging that that's
16:03:47 5 what is stated in that patent of Chang '252.

16:03:55 6 Q I'm going to scroll down to paragraph 24 of
16:04:18 7 Chang. Do you see where my mouse is on the screen?

16:04:39 8 A Yes, I see it.

16:04:40 9 Q I'm going to read that sentence in from
16:04:43 10 Chang. Actually, how about you do it? Start from
16:04:48 11 "next" and just read the one sentence?

16:04:51 12 A "Next, use a hammer to pound the head 321 of
16:04:59 13 the retention unit 32 until the nail retention
16:05:03 14 member 10 is implanted in the femur."

16:05:08 15 Q Okay. So do you see in Chang where it says
16:05:13 16 in Figure 5 where retention member 10 is implanted
16:05:17 17 in the femur? Do you see that?

16:05:19 18 A Yes, I see that.

16:05:20 19 Q Okay. So you're willing to agree that 10,
16:05:27 20 nail 10 from Figure 5 that you've shown in
16:05:30 21 paragraph 54 is in a femur?

16:05:34 22 A In this sentence, Chang is explaining his
16:05:37 23 surgical technique, but I do not recall addressing
16:05:40 24 that in my declaration.

16:05:42 25 Q So you can't read the sentence we just read

16:05:48 1 and opine that nail 10 is in a femur in Figure 5?

16:05:57 2 A I don't recall addressing that in my
16:06:00 3 declaration.

16:06:02 4 Q Okay. We can move on. Staying on
16:06:18 5 paragraph 54 of your declaration, which is
16:06:22 6 Exhibit 1018.

16:06:25 7 A Yes.

16:06:25 8 Q We're looking at Figure 11 of the '166
16:06:31 9 patent, the first image in your paragraph 54. Do
16:06:35 10 you see that?

16:06:35 11 A Yes, I do.

16:06:36 12 Q Would you agree that that screw shown in
16:06:43 13 Figure 54 is oriented such that it is slightly
16:06:47 14 turned into the page and so that you could see the
16:06:50 15 top of the screw?

16:07:02 16 A I don't recall addressing that in my
16:07:05 17 declaration as it pertains to Figure 11.

16:07:09 18 Q Can you see the top of -- in paragraph 54,
16:07:13 19 Figure 11 that you've shown in your declaration, can
16:07:17 20 you see the top of the screw that you've shown from
16:07:22 21 Figure 11 of the '166 patent?

16:07:25 22 A Yes, I can see the top of the screw on
16:07:27 23 Figure 11 of the '166 patent.

16:07:31 24 Q Okay. And moving down one, looking at
16:07:34 25 Figure 1 of Simon in your paragraph 54, can you see

16:07:38 1 the top of Simon?

16:07:42 2 A I see -- I see Figure 1 in Simon.

16:07:48 3 Q Yeah. Can you see the same perspective of
16:07:52 4 the top that you see of Figure 11 in the '166 patent
16:07:56 5 in Figure 1 of Simon?

16:08:02 6 A Can you rephrase the question? I don't
16:08:05 7 quite understand what you mean by top.

16:08:07 8 Q Sure. So you just testified that in
16:08:10 9 Figure 11 of the '166 patent, you can see the top?

16:08:16 10 A Yes, I can see the top of Figure 11, yes.

16:08:21 11 Q Can you see the top of Simon Figure 1, the
16:08:26 12 nail -- the top of the nail of Simon Figure 1?

16:08:31 13 A I don't think I've addressed that in my
16:08:36 14 declaration.

16:08:37 15 Q But can you see it now?

16:08:40 16 A When you say top of Simon, I don't
16:08:43 17 understand your question.

16:08:44 18 Q The same top that you can see in Figure 11
16:08:47 19 for the '166 patent, do you see it in the same
16:08:50 20 perspective for figure -- the nail in Figure 1 of
16:08:55 21 Simon?

16:08:57 22 A It's difficult for me to determine what is
16:08:59 23 the perspective in these other illustrations and
16:09:04 24 figures. Simon appears to be of one perspective,
16:09:12 25 Chang appears to be of another, and patent Figure 11

16:09:16 1 appears to be of another. So it's hard to tell
16:09:19 2 relative to each other. As we discussed earlier
16:09:22 3 that there are -- they are at different scales.
16:09:26 4 It's -- each individual figure is at a different
16:09:28 5 scale, so it's hard to compare them as if they were
16:09:30 6 all the same.

16:09:37 7 MR. FERRARO: Yes, I agree. No further
16:09:57 8 questions. I'll pass the witness.

16:10:12 9 MR. KAMHOLZ: Pursuant to 37 CFR 42.64(a),
16:10:24 10 Petitioner objects during the deposition of Leonel
16:10:27 11 Dominguez to the admissibility of Exhibits 2024,
16:10:31 12 2025, 2026, 2027, 2030, and to all the questions
16:10:39 13 asked and testimony elicited with respect to these
16:10:45 14 exhibits under 37 CFR 42.23(b).

16:10:53 15 MR. FERRARO: Can you repeat the list of
16:10:58 16 exhibits?

16:10:58 17 MR. KAMHOLZ: Exhibits 2024, 2025, 2026,
16:11:05 18 2027 and 2030. And with that, I have no questions.

16:11:46 19 (Short recess.)

16:13:08 20 MR. FERRARO: So I just had a question,
16:13:13 21 Scott. You said -- I'm not sure if I got the
16:13:16 22 realtime that's accurate. You've objected to the
16:13:19 23 admissibility of the exhibits you've identified -- I
16:13:22 24 won't repeat them -- under 37 CFR Section 42.64(a)?

16:13:30 25 MR. KAMHOLZ: I have objected under 42.23(b)

16:13:34 1 pursuant to 42.64(a).

16:13:40 2 MR. FERRARO: That's the part I missed.

16:15:07 3 Okay. Nothing further here. Thank you,

16:15:11 4 Mr. Dominguez.

16:15:12 5 THE WITNESS: Thank you, Mr. Ferraro.

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7 (Time Noted: 4:15 p.m.)

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C E R T I F I C A T E

I, Sandra L. Rocca, CSR, RMR, RDR, CRR, a
Certified Court Reporter within and for the States
of Illinois, Florida, Washington and Georgia, do
hereby certify:

That LEONEL DOMINGUEZ, the witness whose
deposition is hereinbefore set forth, was duly sworn
by me and that such deposition is a true record of
the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage; and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 8th of June, 2024.



Sandra L. Rocca, CSR, RMR, RDR, CRR

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Illinois, D.C. and Florida Notary