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Patent Owner.

PATENT 11,298,166 B2

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2

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24

25 * * * * *

1 I N D E X

2 WITNESS PAGE

3 LEONEL DOMINGUEZ

4 EXAMINED BY

5 Mr. Bapna 4

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7 * * * * *

8

E X H I B I T S

9

10 EXHIBIT PAGE

11 Exhibit 1056 U.S. Patent Application 11
Number 2011/0087227

12

13 Exhibit 1054 Third Declaration of Leonel 38
Dominguez in Support of
Petitioner

14

15 Exhibit 1060 U.S. Patent Application 87
Publication Number
2011/0022173

16

17 Exhibit 1063 U.S. Patent Application 95
Publication Number
2008/0221623

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

2 ATTORNEY BAPNA: Mr. Dominguez,
3 my name is Abhishek Bapna. I'm with the
4 law firm Kelley Drye & Warren, and I'm
5 representing the patent owner today.

6 THE WITNESS: Good morning,
7 Mr. Bapna. I am Leonel Dominguez. I'm
8 the expert witness for Extremity Medical.

9 I'm sorry. Not for Extremity,
10 for Fusion Medical.

11 ATTORNEY KAMHOLZ: I'm Scott
12 Kamholz, backup counsel for Fusion
13 Orthopedics. I will be defending.

14 Also on the line is Jennifer
15 Brinkerhoff, who is lead counsel for
16 Fusion. I don't imagine she will be doing
17 any questioning unless I'm hit by a bus or
18 something.

19 LEONEL DOMINGUEZ, after
20 having been first duly sworn, was
21 examined and testified as follows:

22 - - -

23 E X A M I N A T I O N

24 - - -

25

1 BY ATTORNEY BAPNA:

2 Q. Mr. Dominguez, good morning.

3 Could you please state your full
4 name for the record?

5 A. My full name is Leonel Dominguez.

6 Q. You've been deposed in this
7 inter partes review proceeding before, correct?

8 A. Yes.

9 Q. Two times?

10 A. Yes. This would be the third, I
11 believe, yes.

12 Q. I'll go over some preliminary matters
13 before we begin here.

14 Pursuant to the oath you just
15 took, you're obligated to tell the truth during
16 this deposition, just the same as if you were
17 testifying in a courtroom.

18 Do you understand that?

19 A. Yes.

20 Q. Have you taken any medication that
21 would prevent you from understanding my
22 questions or answering my questions fully and
23 truthfully?

24 A. No.

25 Q. Have you been deposed since your last

1 deposition in this IPR?

2 A. No.

3 Q. I will now go through some ground
4 rules.

5 I will be asking the questions
6 during this deposition. My questions and your
7 answers will be recorded by the Court Reporter
8 today.

9 The Court Reporter is going to
10 try to record everything that's said during
11 this deposition. So we need to make sure we
12 speak one at a time.

13 I will endeavor to wait until
14 you complete your answer before asking the next
15 question, and I will ask that you wait until I
16 complete my question before you begin to
17 answer.

18 Do you understand?

19 A. Yes.

20 Q. As I said, the Court Reporter is also
21 creating a transcript. So we need answers to
22 be verbal, no "huh-huhs" or head nods.

23 Do you understand?

24 A. Yes.

25 Q. If I ask a question that you do not

1 understand, please let me know and I will try
2 to clarify the question.

3 Is that fair?

4 A. Yes.

5 Q. Given that we're taking the
6 deposition remotely by Zoom, if you don't hear
7 a full question due to poor connectivity,
8 please let someone know, and we will ensure
9 that you hear and understand the question.

10 Do you understand that?

11 A. Yes.

12 Q. Okay. If you do answer a question, I
13 will assume that you understood my question.

14 Is that fair?

15 A. Yes.

16 Q. Okay. If you, at any time, need a
17 break, just let me know. I ask that if a
18 question is pending, however, you answer the
19 question and then we'll take the break.

20 Do you understand?

21 A. Yes.

22 Q. Okay. You're not to communicate with
23 your attorneys about the substance of your
24 testimony while I'm asking questions today.

25 Do you understand that?

1 A. Yes.

2 Q. Do you have any papers in front of
3 you today?

4 A. The only paper I have in front of me
5 is a full blank printout of my dec,
6 declaration.

7 Q. Is that the third declaration?

8 A. This is the third declaration,
9 Exhibit 1054.

10 Q. Okay.

11 A. It's just a printout, no markings.

12 Q. Okay. Do you have any other papers
13 in front of you?

14 A. No.

15 Q. Okay. Do you have any items in front
16 of you other than your computer?

17 A. My computer, two monitors, and my
18 mouse and keyboard.

19 Q. Okay. Do you have any software
20 application open on your computer other than
21 Zoom?

22 A. Other than Zoom, I believe I have my
23 Outlook email open, which I can close if you're
24 not sending anything through that.

25 Q. Yes. If you could please close that,

1 I would appreciate it.

2 A. Okay.

3 So I have my Zoom open. That's
4 the only program I have open.

5 Q. Okay. Is there anyone else in the
6 room with you today?

7 A. I'm in my house -- in my office
8 within my house. My wife is here doing
9 things --

10 Q. Okay.

11 A. -- running in and out. So that's the
12 only person.

13 Q. Did you do anything to prepare for
14 this deposition?

15 A. Well, I reviewed my declaration
16 several times and discussed it with counsel,
17 Mr. Kamholz, and reviewed, you know, some of
18 the prior art and some of the other
19 declarations that have been made in the past.

20 Q. Did you meet with anyone other than
21 Mr. Kamholz in preparing for today's
22 deposition?

23 A. It's been primarily Mr. Kamholz -- or
24 Dr. Kamholz and Jennifer Brinkerhoff.

25 Q. Okay. How many meetings did you have

1 with either Mr. Kamholz or Ms. Brinkerhoff?

2 A. In what context?

3 Q. In preparation for today's
4 deposition.

5 A. During the past two days, I've had
6 Zoom calls with them to discuss the -- to
7 discuss my declaration.

8 Q. Now, today, when I say "the
9 '166 patent," will you understand that I'm
10 referring to U.S. Patent Number 11,298,166 at
11 issue in this case?

12 A. Yes. Yes, I do.

13 Q. And today, if I distinguish between
14 the original claims of the '166 patent and the
15 substitute claims of the '166 patent, will you
16 understand what I mean?

17 A. Yes.

18 ATTORNEY BAPNA: Okay. Now, I'm
19 going to transmit an exhibit that has
20 previously been marked in this case as
21 Exhibit Number 1056.

22 - - -

23 (Whereupon, Exhibit 1056 was
24 previously marked for identification.)

25 - - -

1 BY ATTORNEY BAPNA:

2 Q. Please let me know when you have that
3 open on your screen.

4 A. Okay. I've got it open.

5 Q. For the record, you're looking at
6 U.S. Patent Application Publication
7 Number 2011/0087227 to Mazur et al.?

8 A. Yes, that is correct.

9 Q. You have opined in your third
10 declaration that this reference to Mazur
11 anticipates and renders obvious certain of
12 patent owners substitute claims, correct?

13 A. Correct.

14 Q. Have you read and understood this
15 reference in its entirety?

16 A. Yes.

17 Q. Now, do you agree that Figures 1
18 through 9 of Mazur show one of the embodiments
19 disclosed in the reference?

20 A. Yes. I see that in figures that you
21 mentioned, Mazur is describing various
22 embodiments of his invention.

23 Q. And, in fact, it's a single
24 embodiment that's shown in Figures 1 through 9,
25 correct?

1 A. I do not recall addressing in my
2 declaration Figures 1 through 9 in Mazur. I
3 have disclosed in my declaration other figures
4 of Mazur but not Figures 1 through 9, that I
5 can recall.

6 Q. Sitting here today -- well,
7 withdrawn.

8 Let me turn your attention to
9 paragraphs 28 through 36 of Mazur. Just let me
10 know when you're there.

11 A. 28 through 36?

12 Q. Yes.

13 A. Paragraphs 28 through 36 refers to
14 Figures 1 through 9.

15 Q. Okay. So in paragraph 28, do you see
16 that it states [as read]:

17 "Figure 1 is a
18 perspective view of an
19 embodiment of a bone fixation
20 device implanted in a bone
21 according to the invention"?

22 A. I see that as -- that's what's
23 written there, yes.

24 Q. And then in paragraph 29, do you see
25 that Figure 2 is another view of the same

1 device in Figure 1?

2 A. Figure 29?

3 Q. Paragraph 29.

4 A. Oh, paragraph 29.

5 I see that written.

6 Q. Do you see that in Figure --
7 withdrawn.

8 Do you see that in paragraph 30
9 it states that Figure 3 is a cross-section view
10 of that same device shown in Figure 1?

11 A. I see that as written.

12 Q. And so on and so forth if you read
13 from paragraphs 31 through 36.

14 My question to you is going to
15 be:

16 Do you agree that all of these
17 figures are directed to the single embodiment
18 that is shown in Figure 1 through Figure 9?

19 A. Again --

20 - - -

21 (Whereupon, there was an
22 off-the-record discussion.)

23 - - -

24 THE WITNESS: Could you please
25 repeat the question, Mr. Bapna?

1 BY ATTORNEY BAPNA:

2 Q. Yes.

3 So the question is:

4 Looking at paragraphs 28 through
5 36 of the Mazur publication which describe
6 Figures 1 through 9, do you agree that
7 Figures 1 through 9 show a single embodiment
8 that is described in Mazur?

9 A. As I stated earlier, I do not recall
10 addressing Figures 1 through 9 or paragraphs 28
11 through 36 describing Figure 1 in my
12 declaration.

13 I've used other figures from
14 Mazur in my declaration to describe his
15 invention.

16 Q. Whether or not you've discussed it in
17 your declaration, my question to you is:

18 Sitting here today, after having
19 reviewed this reference prior, are you able to
20 answer the question as to whether Figures 1
21 through 9 show a single embodiment of Mazur?

22 A. I do not recall addressing that in my
23 declaration.

24 Q. Mr. Dominguez, that's not my
25 question. My question has nothing to do with

1 your declaration.

2 ATTORNEY KAMHOLZ: Objection.

3 Scope.

4 BY ATTORNEY BAPNA:

5 Q. Do you recall referencing Figure 7 in
6 your declaration?

7 A. Yes.

8 Q. And do you agree that Figure 7 is a
9 view of the device that's shown in Figure 1?

10 A. In Figure 7, Mazur discloses an
11 example of a straight hub that is shown in his
12 Figure 7. And so he discloses that the hub may
13 be, quote, straight, unquote.

14 Q. And that device that's shown in
15 Figure 7 is the same embodiment that's shown in
16 Figure 1, correct?

17 A. Figure 7 is listed on page 1 of
18 the -- the title page of Mazur's provisional
19 patent, and it's shown in Figure -- in Figure 7
20 of page -- on Sheet 7 of his -- of his
21 provisional patent application.

22 Q. That wasn't my question,
23 Mr. Dominguez.

24 My question was:

25 Do you understand that Figures 1

1 and 7 of Mazur show the same embodiment?

2 A. I do not recall addressing Figure 1
3 in my declaration.

4 Q. Are you able to answer my question,
5 Mr. Dominguez?

6 A. Yes. I am answering your question.
7 I do not recall addressing
8 Figure 1 in my declaration. I've addressed
9 Figure 7.

10 Q. I'm not talking about your
11 declaration. I'm asking about your
12 understanding of the reference.

13 Do you understand me?

14 ATTORNEY KAMHOLZ: Objection.
15 Scope.

16 THE WITNESS: Once again, I
17 don't recall addressing Figure 1 in my
18 declaration.

19 BY ATTORNEY BAPNA:

20 Q. Mr. Dominguez, you keep answering by
21 reference to your declaration even though I'm
22 not asking about your declaration.

23 I just want you to know that
24 when we submit this transcript to the patent
25 board -- to the patent judges, if you don't

1 answer my questions, I'm going to have to show
2 them the transcript and tell them that you were
3 either unwilling or unable to answer my
4 questions.

5 Do you understand that?

6 A. Yes.

7 ATTORNEY KAMHOLZ: Object to
8 foundation.

9 BY ATTORNEY BAPNA:

10 Q. Now, let's go to paragraph 55 of
11 Mazur.

12 Would you read that sentence
13 into the record for us?

14 A. 55 reads [as read]:

15 "Figures 16A through 16E
16 show various views of another
17 exemplary embodiment of a bone
18 fixation device hub."

19 Q. And that sentence is stating that
20 Figures 16A through E are showing another
21 embodiment that's different from the ones
22 previously shown in earlier figures, right?

23 ATTORNEY KAMHOLZ: Objection.
24 Foundation.

25 THE WITNESS: [As read]:

1 "Mazur discloses a bone
2 fixation device having the hub
3 550 with a series of holes
4 through which the screws
5 example 556 pass to anchor the
6 hub in bone. Figure 16A shows
7 the hub and one screw that
8 passes in through the end of
9 the hub and out through
10 hole 554, while another screw
11 may pass through the more
12 distal set of holes."

13 BY ATTORNEY BAPNA:

14 Q. That's not paragraph 55.

15 Where are you reading from?

16 A. I'm reading from my declaration
17 concerning Figure 16A.

18 Q. Okay. I'm asking you to look at
19 paragraph 55.

20 Do you understand that,

21 Mr. Dominguez?

22 A. Paragraph 55 reads [as read]:

23 "Figures 16A through 16E
24 show various views of another
25 exemplary embodiment of the

1 bone fixation device hub."

2 Q. That paragraph that you just read
3 references another exemplary embodiment.

4 That's what it said, right?

5 A. That's what it says.

6 Q. And when it says "another exemplary
7 embodiment," you understand that means it's a
8 different embodiment than ones shown in other
9 figures, correct?

10 ATTORNEY KAMHOLZ: Objection.
11 Foundation.

12 THE WITNESS: Yeah, I -- I
13 didn't define the term "embodiment" in my
14 declaration.

15 BY ATTORNEY BAPNA:

16 Q. Do you have an understanding of what
17 this paragraph is saying when it says "another
18 exemplary embodiment"?

19 A. Paragraph 55 reads [as read]:

20 "Figures 16A through
21 16E."

22 So those figures -- 16A, I
23 interpret that to be 16A, 16B, 16D, et cetera,
24 until we reach 16E. And it shows various views
25 of another exemplary embodiment of a bone

1 fixation device hub.

2 Q. Yes.

3 Do you have an understanding of
4 what that statement means when it says "another
5 separate embodiment"?

6 A. Figure 16A shows a curved hub, but
7 Mazur discloses that the hub may be straight in
8 this Exhibit 1056.

9 An example of a straight hub is
10 shown, as I did, in Figure 7. But Mazur goes
11 on to disclose that the features of one
12 embodiment applies to others.

13 In my opinion, a statement in
14 Mazur's paragraph 094 that "a straight" --
15 "a straight, curved, flexible, rigid, or no hub
16 at all may be used with the above combinations"
17 indicates that Mazur expressly discloses advice
18 in which the screw passes through the notched
19 open end of a hub, as shown in Figures 12G, H,
20 I, 16A, 16B, 16C that is straight, as shown in,
21 for example, in Figure 7.

22 So Mazur repeatedly emphasizes
23 the interchangeability of parts.

24 Q. Okay. So you're not going to answer
25 my question. I've got it.

1 Now, Figures 1 through 11D of
2 Mazur show embodiments that are similar to each
3 other, correct?

4 A. Can you repeat the question?

5 Q. Figures 1 through 11D of Mazur show
6 embodiments that are similar to each other,
7 right?

8 A. I did not compare in my declaration
9 Figures 1 through 11, as you state. I only
10 used Figure 7 and Figure 16.

11 Q. Please look at those figures now and
12 let me know in your answer.

13 A. I do not recall addressing that in my
14 declaration.

15 Q. Are you going to answer the question?

16 A. I'm trying to answer your question as
17 truthfully as I possibly can with my knowledge.

18 But I did not address that in my
19 declaration.

20 Q. Which means that you don't have
21 knowledge of that sitting here today?

22 A. I do not recall it -- expressing an
23 opinion on -- in my declaration about that.

24 Q. Do you see any curved fixation device
25 in Figures 1 through 11D?

1 A. Figure 7 appears to be straight. And
2 I do express that in my declaration.

3 I did not -- I did not express
4 or address the shape of the other figures that
5 you cite other than Figure 7.

6 Q. In your experience, would the
7 embodiment shown in Figure 7 be used for
8 fixation of the radial bone?

9 A. I mean, Mazur repeatedly emphasizes
10 the interchangeability of parts, such as
11 [as read]:

12 "Various hub designs that
13 are disclosed that may be used
14 in combination with other
15 fixation device components.

16 "Devices of this
17 invention can be adapted for
18 use in any of the bones of the
19 body as well as appreciated by
20 those skilled in the art.

21 "And the device may be
22 adapted and configured with
23 adequate internal dimensions
24 to accommodate mechanical
25 fixation of the target bones

1 and to fit within the
2 anatomical constraints."

3 Q. Again, you're reading from your
4 declaration but not listening or answering my
5 question.

6 My question, Mr. Dominguez, are
7 you ready for it?

8 A. Yes.

9 Q. In your experience, would the device
10 that is shown in Figure 7 of Mazur be used by a
11 surgeon for fixation of the radial bone?

12 A. I do not recall addressing the radial
13 bone in my declaration.

14 Q. Sitting here today, can you answer
15 the question?

16 Would a surgeon use that device
17 for fixation of the radial bone? Yes or no?

18 A. Well, Mazur was considered a POSA.
19 In his patent — provisional patent
20 application, he repeatedly emphasizes the use
21 of interchangeability of parts in his design,
22 such as [as read]:

23 "Various hub designs are
24 disclosed that may be used in
25 combination with other

1 fixation components.

2 "And the devices of this
3 invention can be adapted for
4 use in any of the bones of the
5 body as well as appreciated by
6 those skilled in the art."

7 Q. Now, Mazur described certain
8 embodiments in which the fixation device is
9 straight and then certain other embodiments in
10 which the fixation device is curved, correct?

11 A. Mazur does disclose that one of the
12 features of his embodiment applies to others.

13 And in my opinion, the statement
14 in Mazur, paragraph 94, in that [as read]:

15 "A straight, curved,
16 flexible, rigid, or no hub at
17 all may be used with the above
18 combinations."

19 It indicates to me that Mazur
20 expressly discloses the device in which the
21 screw passes through the open -- notched open
22 end of the hub and is straight.

23 And so Mazur repeatedly
24 emphasizes the interchangeability of parts in
25 his design such that the device can be used and

1 can be adapted for use in any of the bones of
2 the body.

3 Q. Mr. Dominguez, you're reading from
4 your declaration. I know what's in your
5 declaration.

6 I'm asking about your
7 understanding of certain things. And, again,
8 you refuse to answer the questions.

9 ATTORNEY BAPNA: Let the record
10 reflect that.

11 BY ATTORNEY BAPNA:

12 Q. Mr. Dominguez, what is the purpose of
13 the curvature of -- of the fixation device in
14 certain embodiments shown in Mazur?

15 A. Mazur emphasizes the
16 interchangeability of parts, such as various
17 hub designs, that are used -- that are
18 disclosed that may be used in combination with
19 other devices. And the devices of his
20 invention are adapted to use in any of the
21 bones of the body.

22 So he is -- Mazur is emphasizing
23 that he has various hub designs and that -- and
24 his invention can be adapted for use in any of
25 the bones of the body.

1 Q. Why are certain of the embodiments in
2 Mazur curved? What is the purpose of them
3 being curved?

4 A. The device in this invention can be
5 adapted to use in any of the bones of the body.

6 Q. What does the curvature have to do
7 with being adapted to be used in any of the
8 bones of the body?

9 A. Mazur emphasizes the
10 interchangeability of parts, such as various
11 hub designs.

12 So he has various hub designs
13 that are disclosed in his provisional patent
14 that can be used in combination with other
15 fixation devices. And these devices in his
16 invention can be adapted for use in any of the
17 bones of the body, as well -- as can be
18 appreciated by those skilled in the art.

19 Q. Please turn to paragraph 94 of Mazur.

20 Let me know when you're there.

21 A. Yes, I'm there.

22 Q. You cited this paragraph and, in
23 fact, discussed portions of it in your third
24 declaration, right?

25 A. Yes.

1 Q. Could you please read aloud for us
2 the first sentence of Mazur's paragraph 94?

3 A. [As read]:
4 "Device 300 is an example
5 of an embodiment utilizing
6 mixed gripper types. In other
7 words, this device uses one
8 scissors-arm tripod."

9 Is that what you're referring
10 to?

11 Q. Yeah. So just the first sentence.
12 Can you read that first one?

13 A. [As read]:
14 "Device 300 is an example
15 of an embodiment utilizing
16 mixed gripper types."

17 Q. Device 300 is the embodiment that's
18 shown in Mazur's Figures 11A through 11D,
19 correct?

20 A. I do not recall addressing
21 Figures 11A through 11D in my declaration.

22 Q. You cited this paragraph in your
23 declaration, so I'm asking about your
24 understanding of the first sentence.

25 Are you with me?

1 My question to you,

2 Mr. Dominguez:

3 Device 300 is the embodiment
4 that's shown in Mazur's Figures 11A through
5 11D, correct?

6 A. What I've cited in paragraph 94 reads
7 further down that paragraph, not the first
8 sentence. But it is.

9 Q. Let's turn to Figure 11A.

10 A. It's about halfway down, and it says
11 [as read]:

12 "Further, a straight,
13 curved, flexible, rigid, or no
14 hub at all may be used with
15 the above combinations."

16 That is the -- the paragraph --
17 or the sentence that I am citing at
18 paragraph 94.

19 Q. You cited that sentence in
20 paragraph 94, but you read the entire
21 paragraph, didn't you?

22 A. Well, I've read this entire patent,
23 yes.

24 Q. Okay. So let's talk about that first
25 sentence again. Okay?

1 It states that [as read]:

2 "Device 300 is an example
3 of an embodiment utilizing
4 mixed gripper types."

5 Right?

6 A. That's what it reads.

7 Q. Now, you see device 300 is shown in
8 Figure 11A, right?

9 A. Once again, I did not address -- I do
10 not recall addressing Figure 11A in my
11 declaration.

12 Q. Do you see Figure 11A has a notation
13 to Number 300 with an arrow pointing to the
14 device shown there? Do you see that?

15 A. I see that. I see Figure 11A in the
16 provisional patent, yes.

17 Q. Do you see there's a notation to
18 Item 300 in Figure 11A with an arrow pointing
19 to the device?

20 A. Yes, I see that.

21 Q. Okay. And that's the same device 300
22 that's referenced in that first sentence of
23 paragraph 94 we just read, correct?

24 A. As I stated in my -- I do not recall
25 addressing Figure 11A or Figure 300 in my

1 declaration.

2 Q. Now, the device in Figure 11A has
3 grippers.

4 Am I right, Mr. Dominguez?

5 A. I believe that's what we just read,
6 the first sentence of paragraph 94.

7 Q. You agree that there are grippers
8 shown in Figure 11A?

9 A. Once more, I do not recall addressing
10 the grippers -- or addressing that in my
11 declaration.

12 Q. When you were reviewing this patent,
13 did you come to an understanding as to whether
14 Figure 11A shows grippers?

15 A. I do not recall addressing grippers
16 in my declaration.

17 Q. So you don't recall one way or the
18 other whether you came to understand whether
19 Figure 11A has grippers when you were reviewing
20 the patent?

21 A. I did not express an opinion in my
22 declaration concerning grippers.

23 Q. Okay. Now, let's go to the sentence
24 of paragraph 94 that you quoted in your
25 declaration which states [as read]:

1 "Further, a straight
2 curved, flexible, rigid, or no
3 hub at all may be used with
4 the above combinations."

5 Do you see that?

6 A. Yes.

7 Q. What does that sentence mean when it
8 refers to "above combinations"? What
9 combinations are those?

10 A. Mazur discloses that features of one
11 embodiment applies to others and that, in my
12 opinion, Mazur -- in this paragraph -- in this
13 sentence in that "a straight, curved, flexible
14 rigid, or no hub at all may be used with all
15 the above combinations" expressly discloses
16 that a device in which is of various hub
17 designs.

18 So the various hub designs that
19 he's disclosing is a straight, curved, flexible
20 rigid, or no hub at all. And various hub
21 designs are disclosed in Mazur that can be used
22 in combination with other fixation devices.

23 And the devices of his invention
24 can be adapted for use in any of the bones of
25 the body. That's why he's expressing straight,

1 curved, flexible, rigid, or no hub at all.

2 Q. Okay. So what does the word
3 "combinations" means in this sentence?
4 Combinations of what?

5 A. Used in combination with other
6 fixation device components.

7 Q. And when it says "above," is it
8 referring to certain combinations discussed in
9 Mazur above paragraph 94?

10 A. I do not recall addressing that in my
11 declaration.

12 Q. You didn't address the meaning "above
13 combinations" in your declaration in that
14 sentence of paragraph 94?

15 A. I discuss that various hub designs
16 are disclosed in Mazur that may be used in
17 combination with other fixation device
18 components.

19 Q. But you didn't specifically discuss
20 the meaning of the phrase "the above
21 combinations" in that sentence of paragraph 94
22 that you cited, correct?

23 A. I do not recall addressing that in my
24 declaration.

25 Q. All right. Let's turn to Figure 16A

1 of Mazur.

2 A. Yes.

3 Q. At the proximal end of the hub that's
4 shown in this figure, the top surface of the
5 hub has a step-down, right?

6 A. [As read]:

7 "The end of the hub in
8 Mazur's Figure 16A shows the
9 screw passes through" -- "the
10 screw passes through" -- "the
11 screw passes through and has a
12 notch cut out" -- "a notch cut
13 out at the hub sidewall. The
14 end opening is on the top
15 exterior surface of the hub.
16 And the notch, which is
17 contiguous with the end
18 opening, is on the side
19 exterior surface."

20 Q. I understand you're reading from the
21 declaration, Mr. Dominguez. I have a question
22 that's different from what you've just read.

23 Are you ready for my question?

24 A. Please repeat your question.

25 Q. Do you see that in Figure 16A of

1 Mazur the top surface of the hub has a
2 step-down where one section of the -- of that
3 top surface is elevated and the other section
4 of that top surface is stepped down?

5 A. Mazur's Figure 16A shows that the
6 screw passes through -- the screw passes
7 through has a notch cut -- a notch cut out in
8 the hub sidewall and that the end opening is on
9 the top exterior surface of the hub and that
10 the notch is contiguous with the end opening
11 and is on the side exterior surface.

12 Q. Are you able to answer my question
13 with a yes or no?

14 Because I'm not understanding
15 what your answer is.

16 A. I'm calling Mazur's hub as having a
17 notch cut out on the hub sidewall and that
18 the -- there is an end opening on the hub --
19 it's on the top exterior surface of the hub --
20 and that the notch is a continuous feature with
21 the end opening and is on the side exterior
22 surface of the hub.

23 Q. So will you agree or not that Mazur's
24 hub shown in Figure 16A has a top surface with
25 a step-down? Yes or no?

1 A. What I'm saying is that Mazur's hub
2 has a opening for the screw and it also has a
3 notch cut -- notch cut out on the hub sidewall.

4 Q. What's the purpose of the so-called
5 notch cut-out feature?

6 A. Notch cut-out features, such as shown
7 in Mazur, and other POSAs show notch cut-out
8 features on their nails, such as Brumfield,
9 Marcus, Chandran, all show notch features on
10 the end of the nail.

11 Q. What's the purpose of all these notch
12 features?

13 A. These notch features are used with
14 ancillary devices for the purpose of insertion
15 and rotation of the nail to position it
16 properly in the bone.

17 Q. And Mazur also teaches that this
18 notch is used for attachment of the hub to an
19 insertion tool, right?

20 A. I specifically don't recall
21 addressing Mazur's auxiliary devices that he
22 would use with his nail in this application,
23 but he does show a notch.

24 Q. Do you recall reading that when you
25 were reading the Mazur publication?

1 A. I don't recall addressing that in my
2 declaration.

3 Q. Does that mean you don't recall
4 reading it either?

5 A. I don't recall addressing that in my
6 declaration.

7 Q. Okay. Again, you're not answering
8 the question, but okay.

9 The embodiment shown in
10 Figure 16A of Mazur does not have grippers,
11 correct?

12 A. In Figure 16A, Mazur discloses a bone
13 fixation device having a hub with a series of
14 holes to which screws pass to anchor the hub
15 and bone. So [as read]:

16 "Figure 16A shows the hub
17 and one screw that passes in
18 through the end of the hub and
19 out through hole" -- "out
20 through the hole 554, while
21 another screw may pass through
22 a more distal set of holes."

23 So Figure 16A is Mazur's
24 disclosure of his bone fixation device having a
25 hub.

1 Q. Does that fixation device have
2 grippers?

3 A. I do not recall addressing that in my
4 declaration.

5 Q. Sitting here today, can you answer
6 the question whether the embodiment shown in
7 Figure 16A has grippers or not?

8 A. The embodiment shown in Figure 16A is
9 Mazur's disclosure of his bone fixation device
10 having a hub.

11 Q. Does it have grippers? Yes or no?

12 A. I do not recall addressing grippers
13 in my declaration.

14 Q. Sitting here today, can you tell me
15 whether it does?

16 A. Figure 16A is Mazur's disclosure of a
17 hub named 550.

18 ATTORNEY BAPNA: I'm going to
19 transmit to you an exhibit that has
20 previously been marked in this case as
21 Exhibit 1054.

22 - - -

23 (Whereupon, Exhibit 1054 was
24 previously marked for identification.)

25 - - -

1 BY ATTORNEY BAPNA:

2 Q. And that is your third declaration.

3 You're free to use the printed
4 copy you have in front of you, but I'm adding
5 it here for the record.

6 Can you confirm that that is, in
7 fact, your third declaration?

8 A. Yes. That appears to be my third
9 declaration, Exhibit 1054.

10 Q. Okay. Now, please turn to
11 paragraph 12 of your third declaration.

12 A. Yes.

13 Q. You stated here that [as read]:

14 "As shown in the
15 following table, Mazur
16 anticipates each of the
17 proposed new claims either
18 expressly, as shown and
19 described for Figure 16A, or
20 by disclosure elsewhere in the
21 application that is applicable
22 to the various hub
23 embodiments."

24 Right?

25 A. Yes. Correct.

1 Q. So for your opinions that Mazur
2 anticipates substitute claims, you're relying
3 on the embodiment shown in Figure 16A of Mazur,
4 right?

5 A. Yes.

6 Q. And, Mr. Dominguez, do you understand
7 that in order for a reference to anticipate a
8 claim, each and every one of the limitations of
9 the claim must appear in a single embodiment
10 described in that reference?

11 Is that your understanding?

12 ATTORNEY KAMHOLZ: Objection.

13 Foundation.

14 THE WITNESS: I have provided a
15 claim chart using Mazur and the elements
16 in Mazur to describe every claim in '166.

17 BY ATTORNEY BAPNA:

18 Q. I'm asking you for your understanding
19 of the word -- or the term "anticipate." Okay?

20 So do you want me to repeat the
21 question?

22 A. Go ahead and repeat the question,
23 please.

24 Q. Do you understand that in order for a
25 reference to anticipate a claim, each and every

1 one of the limitations of that claim must be
2 taught in a single embodiment described in that
3 reference?

4 Is that your understanding?

5 ATTORNEY KAMHOLZ: Objection.

6 Foundation.

7 THE WITNESS: [As read]:

8 "Although it is my
9 opinion that Mazur anticipates
10 all the proposed new claims,
11 it is also my opinion that
12 Mazur renders them obvious.
13 My anticipation analysis cites
14 statements in Mazur that
15 features of one embodiment
16 apply to others, in
17 particular, the statement in
18 Mazur's paragraph 94 in which
19 the" -- "he claims 'a
20 straight, curved, flexible,
21 rigid, or no hub at all may be
22 used in the above
23 combinations. '

24 "These statements suggest
25 to a person having ordinary

1 skill in the art to modify the
2 embodiments shown in
3 Figure 16A to have a straight
4 hub. Mazur's extensive
5 description of straight-hubbed
6 embodiments show that" --
7 "shows the POSA how to
8 implement such an embodiment
9 with a reasonable expectation
10 of success.

11 "Mazur discloses all the
12 remaining embodiments of the
13 proposed claims in the manner
14 I describe above," in the
15 tables that I provided.

16 "For these reasons, it is
17 my opinion that a POSA would
18 have found it obvious from
19 Mazur to each" -- "to reach
20 the subject matter of every
21 proposed claim."

22 BY ATTORNEY BAPNA:

23 Q. Again, you're reading from your
24 declaration without answering my question.

25 My question, Mr. Dominguez, is:

1 Do you have an understanding of
2 what it means of the -- withdrawn.

3 Do you have an understanding of
4 what the term "anticipate" means with reference
5 to patentability?

6 A. I don't recall addressing the term
7 "anticipation" in my declaration.

8 Q. Well, you wrote the word in your
9 declaration, so you must know what it means,
10 correct?

11 A. As I read before, my anticipation
12 analysis cites that [as read]:

13 "In Mazur, the features
14 of one embodiment apply to
15 others and, in particular, the
16 statement in Mazur's paragraph
17 where he could use a straight,
18 curved, flexible, rigid, or no
19 hub may be used in the above
20 combinations.

21 "And these statements
22 suggest to a person" -- "to a
23 POSA to modify the embodiments
24 shown in Figure 16A to have a
25 straight hub.

1 "And Mazur's extensive
2 description of straight-hubbed
3 embodiments show a POSA how to
4 actually implement that
5 embodiment with a reasonable
6 expectation of success. "

7 Q. Is -- the potential modification of
8 the curved hub of the embodiment in Figure 16A
9 to have a straight hub, is that potential
10 change part of your anticipation analysis or
11 your obviousness analysis?

12 A. I've stated that [as read]:
13 "My anticipation analysis
14 cites the statements in Mazur
15 that features of one
16 embodiment may apply to others
17 and, in particular, Mazur's
18 paragraph 94 that a straight,
19 curved, flexible, rigid, or no
20 hub at all may be used in the
21 above combinations. "

22 Q. Which paragraph were you just reading
23 from?

24 A. I'm reading on paragraph 14.

25 Q. Okay. Well, paragraph 14 has to do

1 with obviousness, correct?

2 A. I don't recall addressing that in my
3 declaration.

4 Q. Is it your opinion, Mr. Dominguez,
5 that in -- that Mazur anticipates substitute
6 claims of the '166 patent because it teaches
7 that the curved embodiment of Figure 16A can be
8 made straight?

9 Is that your opinion?

10 A. Mazur does anticipate each of the
11 proposed new claims, either expressly or
12 shown -- as described in Figure 16A or by
13 disclosure elsewhere in the application that --
14 the application to various hub embodiments.

15 So Mazur's use of various hub
16 embodiments, as he stated, either being
17 straight, curved, or having no hub at all, is
18 used in the claim construction.

19 [As read]:

20 "It is my opinion that
21 Mazur anticipates all of the
22 proposed new claims. It is
23 also my opinion that Mazur
24 renders them obvious. And my
25 anticipation analysis cites

1 statements in Mazur that
2 features of one embodiment
3 apply to others, such as a
4 straight, rigid, flexible,
5 rigid, or no hub at all."

6 Q. Let's turn to the part of your Mazur
7 table where you address Claim Limitation~16i
8 and 27i, which is on page 8 of your
9 declaration.

10 A. Yes, I see that.

11 Q. This limitation recites [as read]:

12 "The third longitudinal
13 axis and the first bore axis
14 define a first angle."

15 Right?

16 A. That's what it says.

17 Q. You've annotated here what is, in
18 your opinion, the third longitudinal axis in
19 the embodiment shown in Mazur's Figure 16A,
20 right?

21 A. I show Figure 16A annotated with --
22 showing Mazur's original Figure 16A shown as
23 curved.

24 But as we've stated before,
25 Mazur also anticipates the hub being straight.

1 Q. Your annotation for the third
2 longitudinal axis is a curved line, right?

3 A. I am pointing to a third longitudinal
4 axis reflecting Figure 16A, understanding that
5 Mazur's hub shown in Figure 16A can be a
6 straight hub, as he has emphasized.

7 And in that event, a straight
8 hub would have a straight longitudinal axis.

9 Q. But Figure 16 doesn't show a straight
10 hub, right?

11 A. Figure 16A is exactly Mazur's
12 Figure 16A.

13 Q. Are you combining the teachings of
14 the curved hub in Figure 16A with the teachings
15 of a straight hub embodiment in Mazur for your
16 anticipation analysis?

17 A. Mazur -- although Figure 16A shows a
18 curved hub, Mazur discloses that the hub may be
19 straight, quote/unquote.

20 In Exhibit 1056, paragraph 94,
21 an example of a straight hub is shown in
22 Figure 7.

23 Q. Is it your opinion that the third
24 longitudinal axis in this anticipation analysis
25 is curved or straight?

1 A. According to Mazur, if he uses a hub
2 that is straight, as shown in Figure 7, which
3 he -- which he cites as being interchangeable
4 with his design, Figure 16A could have a
5 straight hub.

6 And in that event, a straight
7 hub would have a straight third longitudinal
8 axis.

9 Q. And if a curved device is used, is it
10 your opinion that the third longitudinal axis
11 would be a curved line?

12 A. It would represent the line I show in
13 my annotated Figure 16A in blue, pointing to
14 third longitudinal axis for that figure.

15 Q. And that would be a curved axis,
16 right?

17 A. Well, once more, Mazur discusses that
18 the hub may be straight and these hubs are
19 interchangeable.

20 So using a straight hub in this
21 configuration -- or replacing the curved hub
22 with a straight hub in this configuration would
23 result in a straight third longitudinal axis.

24 Q. Yeah. But that's not my question.

25 My question is:

1 In this analysis for
2 Limitation 16i and 27i, are you relying on a
3 curved hub or a straight hub to meet this
4 limitation?

5 A. I don't recall addressing that in my
6 declaration.

7 Q. Have you ever, in any context, in
8 your experience, seen a curved line being
9 referred to as an axis?

10 A. I don't recall addressing that in my
11 declaration.

12 Q. Do you have experience on that point
13 or no?

14 A. I don't recall addressing that in my
15 declaration.

16 Q. In -- on this page of your
17 declaration, with respect to Claim
18 Limitation~16i and 27i, you've also annotated
19 what is, in your opinion, a first angle defined
20 by the two axes, correct?

21 A. In 16i and Figure 16A, no annotated.
22 There is a green first angle described there.

23 Q. And do you agree that the angle
24 that's measured varies depending on which part
25 of the third longitudinal axis you measure the

1 angle from because it's a curved axis?

2 A. With Mazur's straight hub that he has
3 described in this provisional application, the
4 use of a straight hub, a straight hub forming a
5 straight third longitudinal axis and the -- and
6 would form an angle -- a defined angle, a
7 definite angle with the first four axes of the
8 screw.

9 Q. Let's turn to the part of your Mazur
10 table -- well, withdrawn.

11 ATTORNEY BAPNA: We've been
12 going about an hour.

13 Is now a good time for a break?

14 THE WITNESS: Sure.

15 ATTORNEY BAPNA: All right.

16 Let's go off the record.

17 - - -

18 (Whereupon, a short recess was
19 taken.)

20 - - -

21 BY ATTORNEY BAPNA:

22 Q. Mr. Dominguez, let's turn to the part
23 of your Mazur table in your declaration where
24 you address claims 16o and 27n, which are on
25 page 10 of your declaration.

1 A. 16o?

2 Q. Yes.

3 A. Yes.

4 Q. This limitation recites [as read]:

5 "A second bore axis is
6 substantially perpendicular to
7 the third longitudinal axis."

8 Correct?

9 A. That's what it reads, yes.

10 Q. And support in your table for this
11 limitation, you refer to the embodiment of
12 Figure 7?

13 A. That is correct.

14 Q. And embodiment of Figure 7 is the
15 straight hub, correct?

16 A. Yes. It shows a straight hub.

17 Q. Did you not refer to your embodiment
18 of Figure 16A here because that embodiment
19 shows a curved hub?

20 A. As I stated before, Figure 16A, while
21 it shows a curved hub, Mazur anticipates or
22 provides information that if that hub could be
23 straight or curved or of other shapes.

24 So it just made it easy to show
25 Figure 7 having the straight hub shown in

1 that -- in that diagram.

2 Q. Okay. But you agree, sir, that the
3 embodiment of Figure 7 is not the same
4 embodiment as that of Figure 16A in Mazur?

5 A. I beg to differ.

6 In Mazur's disclosure, he is
7 describing the hub that can be straight for
8 Figure 16A.

9 Q. Embodiments shown in Figure 7 does
10 not look like the embodiment shown in
11 Figure 16A, correct?

12 ATTORNEY KAMHOLZ: Objection.

13 Form.

14 THE WITNESS: Can you repeat the
15 question?

16 BY ATTORNEY BAPNA:

17 Q. You agree that the embodiment shown
18 in Mazur's Figure 7 does not look like the
19 embodiment shown in Mazur Figure 16A?

20 ATTORNEY KAMHOLZ: Objection.

21 Form.

22 THE WITNESS: Figure 7 is an
23 example of a straight hub that Mazur
24 discloses.

25

1 BY ATTORNEY BAPNA:

2 Q. And Figure 16A is an example of a
3 curved hub, not a straight hub, correct?

4 A. Figure 16A is -- shows an embodiment
5 of Mazur showing a curved hub. However, he
6 cites that this hub could be straight, curved,
7 or of other shapes or not having a hub at all.

8 So Mazur does describe a hub
9 that can be straight. He happens to show
10 Figure 16 having a curved hub.

11 Q. Are there -- you agree that there's
12 other differences between the embodiment shown
13 in Figure 7 and the embodiment shown in
14 Figure 16A, aside from the
15 curved-versus-straight feature, right?

16 ATTORNEY KAMHOLZ: Objection.
17 Form.

18 THE WITNESS: I don't recall
19 addressing the differences between
20 Figure 16A and Figure 7 in my declaration.

21 BY ATTORNEY BAPNA:

22 Q. So even though you've cited Figure 7
23 and Figure 16A for your opinion that Mazur
24 anticipates Claim 16 and 27, you didn't compare
25 the two embodiments to see what the differences

1 were?

2 A. No.

3 Mazur discloses that the hub may
4 be straight, and he shows an example of a
5 straight hub in his Figure 7. He also
6 discloses that the features of one embodiment
7 apply to others.

8 And in my opinion, the statement
9 of Mazur — again, paragraph 94 — that the hub
10 could be straight, curved, flexible, rigid, or
11 no hub at all may be used.

12 It's my opinion that the
13 resulting embodiment would have a first screw
14 passing through the notch open end of a
15 straight hub and a second screw passing through
16 another point — another pair of apertures in
17 an angle substantially perpendicular to the
18 straight hub for *shows in Figure 7.

19 So he is showing that you could
20 have the possible combinations of having a
21 straight hub and having the screw passing
22 through the top aperture and having a second
23 screw passing substantially perpendicular to
24 the straight hub.

25 Q. In your declaration, did you provide

1 anywhere an analysis comparing the features
2 shown in Mazur's Figure 7 with the features
3 shown in Mazur's Figure 16 anywhere in your
4 declaration?

5 A. It says one embodiment applied to
6 others, in particular the statement in Mazur
7 paragraph 94 that the hub could be straight
8 discovered --

9 THE COURT REPORTER: Off the
10 record.

11 - - -

12 (Whereupon, a short recess was
13 taken.)

14 - - -

15 THE WITNESS: Mr. Bapna, can you
16 please repeat your last question?

17 ATTORNEY KAMHOLZ: Yes.

18 Jennifer, can I ask you to
19 restate it?

20 - - -

21 (Whereupon, the record was read
22 as follows:

23 "QUESTION: In your
24 declaration, did you provide
25 anywhere an analysis comparing

1 the features shown in Mazur's
2 Figure 7 with the features
3 shown in Mazur's Figure 16
4 anywhere in your
5 declaration?")

6 - - -

7 THE WITNESS: Mazur states that
8 features of one embodiment may be applied
9 to others, in particular, to paragraph 94,
10 where he provides information about having
11 a straight, curved, flexible, rigid, or no
12 hub at all.

13 These statements suggest to a
14 POSA [as read]:

15 "to modify the embodiment
16 shown in Figure 16A to have a
17 straight hub."

18 Let me repeat.

19 In Figure 16A, he is suggesting
20 to modify the embodiment shown in
21 Figure 16A to have a straight hub.

22 [As read]:

23 "Mazur's extensive
24 description of a
25 straight-hubbed embodiment

1 shows to a POSA how to
2 implement such an embodiment
3 with a reasonable expectation
4 of success.

5 "Mazur discloses all of
6 the remaining embodiments of
7 the proposed claims in the
8 manner I describe above. For
9 which reasons, it is my
10 opinion that a POSA would have
11 found it obvious from Mazur to
12 reach the subject matter for
13 each proposed claim using a
14 straight hub."

15 BY ATTORNEY BAPNA:

16 Q. You just read an entire section of
17 your declaration into the record.

18 Which paragraph is -- were
19 you're reading from?

20 A. This is mostly paragraph 14.

21 Q. Okay. That was nonresponsive.

22 Mr. Dominguez, did -- anywhere
23 in your declaration, did you provide any
24 conclusion as to whether Figure 7 and
25 Figure 16A of Mazur are showing the same

1 embodiment or different embodiments?

2 A. The only way I know to answer is
3 that, again [as read]:

4 "Mazur describes the hub
5 as multiple embodiments being
6 straight, curved, flexible, or
7 rigid. And as such, the use
8 of a straight hub would allow
9 for embodiments shown to a
10 POSA to implement an
11 embodiment reasonable to
12 expect success."

13 Q. Which paragraph is -- which paragraph
14 did you just read from?

15 A. That's parts of 14.

16 Q. Okay. Now, let's turn to the part of
17 your Mazur table where you address Claim 24,
18 which is on page 12 of your declaration.

19 A. Yes.

20 Q. Okay. This claim recites the
21 limitation [as read]:

22 "The first bore axis and
23 the second bore axis intersect
24 outside the third member."

25 Correct?

1 A. Yes. I see that written.

2 Q. And here you've annotated Figure 16A
3 of Mazur to show that the first bore axis in
4 purple intersects the second bore axis in
5 green, correct?

6 A. That is what I show, yes.

7 Q. Now, here, each axis is defined by a
8 pair of apertures, correct?

9 A. Yes.

10 Q. If the orientation of either of those
11 two pairs of apertures that you see here
12 defining the two axes is varied, then there are
13 an infinite numbers of claims on which the
14 respective bore axes may lie, correct?

15 A. I don't recall addressing that in my
16 declaration.

17 Q. Can you answer that sitting here
18 today?

19 A. Can you repeat the question?

20 Q. Yeah.

21 Do you see two pairs of
22 apertures that define the two bore axes in your
23 annotated Figure 16A?

24 A. Yes.

25 Q. If the orientation of either of those

1 two pairs of apertures is varied, then there
2 are an infinite number of planes on which the
3 respective bore axes may lie.

4 Do you agree with that?

5 A. Well, in Figure 16A, we are showing a
6 purple bore axis passing through the center of
7 the first screw, and we are showing a second
8 bore axis passing through two apertures on the
9 hub.

10 These are fixed apertures on the
11 hub, and they -- I'm showing that they
12 intersect.

13 Q. But if you were to change the
14 orientation of the apertures, then they might
15 not intersect, correct?

16 A. I did not discuss that in my
17 declaration.

18 Q. Do you know, sitting here today, one
19 way or the other, if that's true or not?

20 A. I can't say. I did not address that
21 in my declaration.

22 Q. In your annotated figure, the first
23 and second bore axes you drew necessarily lie
24 on the same plane, correct?

25 A. I am using Figure 16A from Mazur, and

1 it shows the apertures for the second bore axis
2 passing through the first bore axis.

3 Q. Do you mean that the two bore axes
4 intersect?

5 A. The -- both bore axes intersect, as
6 shown there in the annotated Figure 16A.

7 Q. And because they're intersecting,
8 they necessarily lie on the same plane,
9 correct?

10 A. I do not recall addressing the plane
11 that they're on, just that they intersect.

12 Q. Okay. Well, can you answer that,
13 sitting here today, whether they are on the
14 same plane or not? Yes or no?

15 A. I do not recall addressing that in my
16 declaration.

17 Q. Okay. Let's turn to paragraph 21 on
18 page 18 of your declaration.

19 A. Paragraph 21?

20 Q. Yes.

21 A. Yes.

22 Q. In this section, you have opined that
23 the combination of Cognet and Zhang renders
24 obvious certain of the substitute claims,
25 right?

1 A. Yes.

2 Q. And in paragraph 21, you have
3 reproduced the figure from the Zhang reference,
4 right?

5 A. I provided an illustration of the
6 Zhang reference.

7 Q. You mean that you've reproduced the
8 figure from Zhang, correct?

9 A. I provided an illustration of the
10 Zhang figure in page 19.

11 Q. Oh, no. I'm on page 18. I'm talking
12 about paragraph 21.

13 Maybe we're not on the same
14 page.

15 A. Paragraph 21 shows Zhang's
16 intramedullary nail to include an oblique hole
17 for receiving a locking screw.

18 Q. Okay.

19 A. So that's the page I'm on.

20 Q. Okay. In this paragraph, right, you
21 reproduced Zhang's figure in the middle of the
22 page.

23 Do you see that?

24 A. Yes. That is the figure from Zhang's
25 patent.

1 Q. Okay. And Zhang discloses
2 intramedullary nail 1 that has an oblique hole
3 and a groove 4, right?

4 A. Yes.

5 Q. As seen in Zhang's figure, the
6 intramedullary nail 1 also has a spherical or a
7 bulbous portion at its proximal end, correct?

8 A. I don't recall addressing whether
9 Zhang had a spherical, bulbous portion on the
10 head, just -- just provided Zhang's figure to
11 show what his device looks like.

12 Q. No. I'm asking your understanding of
13 the figure of Zhang.

14 Do you agree that Zhang
15 discloses that its intramedullary nail 1 has a
16 spherical or bulbous portion at its proximal
17 end?

18 Do you see that on the figure?

19 A. I don't recall addressing the
20 particular geometry that Zhang has on -- on his
21 intramedullary nail head, just to show that --
22 directly from Zhang's figures, I've just
23 attached those there to show what he is
24 describing as the intramedullary nail, the
25 locking nail, and some of the -- some of the

1 geometric features of the proximal end of his
2 nail.

3 Q. Okay. That did not answer my
4 question.

5 I'm not asking for what's in
6 your declaration. I'm asking you for your
7 understanding of what the figure shows.

8 ATTORNEY KAMHOLZ: Objection.
9 Scope.

10 THE WITNESS: I did not express
11 an opinion on what the shape of Zhang's
12 nail is in my declaration.

13 BY ATTORNEY BAPNA:

14 Q. Okay. Where exactly do you
15 understand the oblique hole to be located?

16 A. [As read]:

17 "Zhang explains that an
18 oblique hole is provided in
19 groove 4 so that the aperture
20 formed by the intersection of
21 the oblique hole and the
22 groove 4 is on a portion of
23 the top exterior surface of
24 the intramedullary nail and
25 also on a portion of the side

1 exterior surface of the
2 intramedullary nail."

3 Q. So is the oblique hole located at the
4 top of the nail where the locking screw enters
5 the nail?

6 A. [As read]:

7 "As can be readily
8 appreciated in the isometric
9 view with the screw removed,"
10 in the illustrations I provide
11 on the top of page 19, "the
12 first aperture (outlined in
13 green) has part of the top
14 exterior surface shaded in
15 red, parts of the side
16 exterior surface shaded in
17 blue, and part of the top and
18 side exterior surfaces shaded
19 in purple.

20 "These portions of
21 Zhang's first aperture are all
22 contiguous with one another as
23 a result of the intersection
24 of the oblique hole and the
25 groove."

1 Q. Now, you've gone to a part of your
2 declaration where you're talking about a 3D
3 model that you created, right?

4 A. Yes.

5 Q. Okay. Well, I'm not talking about
6 that 3D model, Mr. Dominguez. I'm talking
7 about the figure that's shown in Zhang 1 -- in
8 Zhang's figure.

9 I'm talking about the figure
10 that you reproduced in paragraph 21. Okay?

11 A. Okay.

12 Q. So I'm asking you where in that
13 figure is the oblique hole exactly located?

14 A. Zhang provides an oblique hole that
15 runs into the groove on 4.

16 So if you look at the figure --
17 a closeup annotated figure of Zhang, shown to
18 the right with the blue background, that's a
19 closeup of the top end of Zhang's nail.

20 That shows a locking nail in
21 green, and it shows a -- his nail in pink.

22 And you can see there that the
23 oblique hole is provided and is contiguous with
24 the groove so that the aperture formed by the
25 intersection of the oblique hole and groove is

1 on a portion of the top exterior surface of the
2 nail and on the portion of the side exterior
3 surface of the nail.

4 Q. So the oblique hole is at the top of
5 the nail where the locking screw enters the
6 nail and where the head of the locking screw
7 rests; is that right?

8 A. The oblique hole is a contiguous bore
9 that runs through the groove so that an
10 aperture is formed by the intersection of the
11 oblique hole and the groove on the portion of
12 the top exterior surface of the nail and also
13 on a portion of the side exterior surface of
14 the nail.

15 Q. Okay. Well, how do you know that
16 Zhang's reference to "oblique hole" is not to
17 the aperture at the other end where the locking
18 screw exits the nail?

19 A. "Oblique," by definition, is merely
20 an angle.

21 Q. Okay. But isn't -- the aperture at
22 the other end where this locking screw exits
23 the nail, isn't that also at an angle?

24 A. Well, we've got -- Zhang is providing
25 an oblique hole that is straight through,

1 and -- and it's a continuous oblique hole that
2 runs into the -- that is contiguous with the
3 groove so that the aperture -- so that it forms
4 an intersection with the hole and the groove to
5 form this geometry.

6 So the oblique hole that Zhang
7 describes is a straight hole.

8 Q. Okay. As for groove 4, what is the
9 purpose of that in Zhang's device?

10 A. Zhang describes the purpose of the
11 element 4 -- or he calls it a groove -- on the
12 portion of the top exterior surface. And he
13 describes that -- the purpose of that groove...

14 Find my spot.

15 Zhang shows a groove which is
16 a -- primarily "a screwdriver slot or a
17 torque-transmitting aperture on the top end of
18 the locking nail, thereby reinforcing the
19 suggestion that this feature is conventional,
20 commonplace, and is obvious to include in my
21 opinion" that this slot is used with a
22 ancillary tool such as a screwdriver for
23 turning the nail into position.

24 Q. So is that similar to the purpose of
25 the feature that you referred to as a notch in

1 Mazur's device?

2 ATTORNEY KAMHOLZ: Objection.

3 Foundation.

4 THE WITNESS: I do not recall
5 comparing the notch in Mazur's device to
6 the groove in Zhang.

7 BY ATTORNEY BAPNA:

8 Q. Do you have an understanding sitting
9 here today?

10 A. I do not recall addressing that in my
11 declaration.

12 Q. Okay. In Zhang, how do you know that
13 an aperture is formed at all at the top of the
14 nail?

15 A. If I refer you to the illustration of
16 the Zhang 3D model on page 20, in this view,
17 this shows Zhang's model or illustration of
18 Zhang's model with the screw itself removed.

19 And the view is aligned -- and
20 in the rightmost view, Zhang's aperture is
21 traced in green.

22 And as you can see in the views
23 that [as read]:

24 "The opening from

25 Figure 18 patent owner relies

1 upon to meet the recited
2 'first aperture' is composed
3 from multiple voids that are
4 contiguous with one another
5 due to the interaction with
6 the screw bore and the nail
7 cannulation.

8 "Zhang's aperture is
9 similarly formed from
10 contiguous voids resulting
11 from an intersection of an
12 oblique hole and groove.

13 "For these reasons, it's
14 my opinion that Zhang's
15 aperture meets the recited
16 'first aperture.'"

17 As you can see on top of
18 page 20, the green outline for Zhang's 3D
19 model, it shows the — it shows the slot or the
20 groove and the — and the bore aperture.

21 And it forms a contiguous green
22 outline shape at the aperture, which has the
23 aperture at the top and also along — cutting
24 along the top and also cutting along the sides
25 of the nail head.

1 Q. Now, we'll get to the 3D model in a
2 minute.

3 But the 3D model is not
4 contained in Zhang, right?

5 That's not -- the models did not
6 come from the Zhang reference; you created that
7 model, correct?

8 A. Yes.

9 Q. Okay. I'm talking about the
10 disclosure to the Zhang reference -- the
11 explicit disclosures of the Zhang reference,
12 including the figure and looking at the figure
13 and saying how do you know that an aperture is
14 actually formed by looking at that figure of
15 Zhang?

16 A. In Zhang's patent, he describes the
17 purpose of groove 4 is a slot for a
18 screwdriver.

19 In his Exhibit 1048,
20 paragraph 4, lines 30 through 35 [as read]:

21 "This groove allows the
22 user to insert a screwdriver
23 into groove 4 in advance of
24 the intramedullary nail 1 the
25 last 1/4 of the insertion

1 depth while rotating it to the
2 correct plane for inserting
3 the locking nail at the
4 appropriate angle to repair
5 the bone fracture."

6 And so in my opinion, a POSA
7 would have found it obvious to implement the
8 use of a screwdriver to turn the nail using the
9 slot or the groove that Zhang discusses and
10 describes.

11 Q. That's not -- nonresponsive, but
12 okay.

13 Zhang, in its figure, does not
14 show the bounds of the aperture that you are
15 claiming exists, right?

16 A. I describe the bounds of the aperture
17 through the removal of the screw -- locking
18 screw or locking nail, Item 2, and then showing
19 in my illustration what the geometry -- what
20 the aperture would look like directly on the --
21 on Zhang's 3D model.

22 Q. Well, with reference to the figure
23 shown in Zhang, couldn't it be that there is
24 simply a flat surface on that top portion of
25 Zhang's nail that has been milled down to allow

1 the locking screw to rest on that flat surface?

2 A. If you observe carefully the model
3 that I created -- the Zhang 3D model that I
4 created has a flat top surface to Zhang's nail.

5 And the oblique hole that is --
6 that is -- that is passed through the top of
7 the nail traverses both the top and the side
8 surface of Zhang's nail. And the groove that
9 Zhang also provides cuts through the top and
10 side surfaces of the head -- of the nail.

11 Q. Well, going back to Zhang's figure,
12 my question to you is that:

13 Couldn't it be that there's no
14 aperture in Zhang's device but simply a flat
15 surface on which the locking screw is resting?

16 A. Zhang's screw or locking screw, Item
17 Number 2 -- Element Number 2 in his figure,
18 must pass through, as he's inserting it through
19 the top -- from the top to the bottom and
20 passing through that oblique hole that he's
21 created.

22 So that head -- the head of that
23 screw is passing through the aperture -- or the
24 screw itself is passing through an open
25 aperture.

1 Q. So your opinion is that Zhang's --
2 the top of Zhang's nail necessarily has an
3 aperture because the screw is passing through
4 it; is that right?

5 A. Zhang's nail has an aperture that
6 includes removing material from the top of the
7 nail -- or top of the head of the nail and also
8 through the side surface of the nail.

9 Q. And couldn't that removal of material
10 have been just by milling down a portion of
11 that top of the nail instead of creating an
12 aperture, as you have shown in your 3D model?

13 A. In Zhang's -- Zhang Element Number 4,
14 the groove that we've been discussing,
15 traverses the bore -- the oblique bore that
16 he's described for the screw.

17 And so that's the geometry that
18 is formed by Zhang's figure.

19 Q. Okay. Let's talk about, now, you're
20 3D model that you describe on page 22 --
21 sorry -- paragraph 22 of your declaration.

22 So let me step back.

23 Mr. Dominguez, you created a 3D
24 model of Zhang's device in SOLIDWORKS based on
25 a request from petitioner, Fusion, correct?

1 A. Yes.

2 Q. How much experience do you have using
3 SOLIDWORKS?

4 A. Approximately -- over 20 years, 20 to
5 25 years.

6 Q. Could you please describe for us --
7 and more importantly, for the patent judges who
8 are going to be reading this transcript -- how
9 you arrived at this 3D model of the Zhang
10 device?

11 A. I viewed Zhang's figure that he
12 provides in his patent, and he basically shows
13 just one -- one primary figure of his nail and
14 his locking screw in a locked position, as he
15 shows it and he describes it in his patent.

16 And I focused on the proximal
17 end of his figure, and I modeled -- for
18 illustrative purposes, I modeled what I saw in
19 Zhang's figure. And that is a -- and that is
20 what the model that I provide -- I call it
21 "Zhang 3D model."

22 Q. You modeled what you saw in Zhang's
23 figure, but that's not necessarily what another
24 POSEA or somebody else would see in Zhang's
25 figure, correct?

1 A. Well, I'm capturing the major
2 elements that Zhang has described in his figure
3 as Elements 1, 2, 4 and into my model, as I
4 visually see it.

5 Q. Well, you would agree, though, that
6 there's other models and other designs that
7 could be created using Zhang's figure that look
8 different than yours, right?

9 A. I do not recall addressing that in my
10 declaration.

11 Q. Do you have an opinion on that,
12 sitting here today?

13 A. No. I do not recall addressing that
14 in my declaration.

15 Q. Okay. Now, what information or
16 instructions did Fusion give to you when they
17 reached out to you to request this 3D model?

18 A. I actually suggested to Fusion that I
19 can create a model of Zhang or an approximate
20 model to illustrate more -- in more detail the
21 attributes of Zhang's aperture.

22 Q. Did anyone provide feedback to you on
23 a preliminary model you had created that you
24 used for refining it?

25 A. No. I just created one model the

1 first time.

2 Q. Okay. How long did it take you to
3 create the model?

4 A. 30 minutes.

5 Q. Can you describe to me the actual
6 process of creating the model?

7 Like, did you use any manual
8 drawing? Was it automated?

9 Just in general, how it works.

10 A. I illustrated -- it's an illustration
11 of Zhang based on Zhang's figure in his patent.

12 And so I took those attributes
13 from Zhang's figure and created a 3D model of
14 that to include both the nail and the locking
15 screw -- or the locking nail, that he calls.

16 So I show the -- I show the
17 screw in a light -- I show the nail in a light
18 silver color. And I show the locking nail,
19 which is the screw that passes into the head,
20 as a darker gray color.

21 And then I remove the locking
22 nail or the screw for this illustration. And
23 in the third view across, on the top of
24 page 19, I am showing you an isometric view
25 with the screw removed showing the aperture

1 that is in the Zhang 3D model.

2 Q. When you created the model, did you
3 take an electronic version of Zhang's figure
4 and input it into SOLIDWORKS or not?

5 A. As I stated, this is an illustration.
6 So I'm not using any detail measurements,
7 per se. It is just a visual illustration.

8 Q. Okay. What assumptions did you make
9 in order to create this model?

10 A. Just the visual -- the visual showing
11 of Zhang in his figure is what I used to
12 show -- to create this 3D model.

13 Q. Okay. Is it fair to say that your
14 model provides detail in three-dimension;
15 whereas, Zhang's figure provides detail only in
16 two dimensions?

17 A. Zhang's figure is on paper, so it's
18 two-dimensional.

19 Q. My question is a little different.
20 Let me try another way.

21 Your model has given you the
22 ability to show isometric views of a device;
23 whereas, Zhang's figure shows only a front
24 view, correct?

25 A. I don't recall addressing that in my

1 declaration. I am just going by the Zhang view
2 provided in this patent.

3 Q. Would you agree that your model has
4 much higher resolution than does Zhang's
5 figure?

6 A. I don't recall addressing resolution
7 in my declaration.

8 Q. Well, would you agree that your model
9 has more detail than Zhang's figure?

10 A. In that Zhang's model is a 2D figure
11 and -- you know, you can blow it up, as I did
12 on the right side there. I've shown with a
13 blue background, showing a little more detail
14 as what's going on.

15 That is the information that I
16 used to create the 3D model.

17 Now, as a person experienced,
18 you know, in the art of creating these types of
19 devices, it was very clear to me how to create
20 this model using Zhang's 2D figure.

21 Q. Wouldn't you say that your model has
22 a lot more clarity than Zhang's figure?

23 A. No. I would say -- it's not that it
24 has more clarity. It just -- the 3D model
25 allows you to show various perspective views,

1 like I showed in the isometric view of just the
2 head with the screw removed.

3 Or in the side view, which is
4 more representative of the Zhang figure, on the
5 far left, showing the screw and the -- a side
6 view of the nail, that is more representative
7 of the figure in Zhang with the blue background
8 on page 18.

9 So starting from there, I
10 started to rotate the model in 3D to show a
11 front view, an isometric view. And then the
12 third view is with the screw removed so that
13 you could clearly see the -- you know, the
14 internal -- the aperture better.

15 Q. Zhang's -- the Zhang reference does
16 not show any isometric views of its device,
17 correct?

18 A. I believe, no. This is what Zhang
19 provides.

20 But he describes the device and
21 how it's used so that -- a POSA would
22 understand certain features would have to be
23 there in order for him to complete what he's
24 trying to do -- accomplish what he's trying to
25 do with the implantation.

1 In other words, he's described
2 that it has a groove and that he's using a
3 screwdriver when he's first inserting that nail
4 up to about a quarter of a turn from the end.

5 And then he's using the
6 screwdriver to rotate the nail to the -- to
7 locate the fracture zone. And then he's
8 inserting the locking nail or the screw through
9 that in order to capture and reduce the
10 fracture.

11 So he does describe his surgical
12 technique in such a way that a POSA could use
13 that information and create the model that I've
14 created.

15 Q. And your model shows the Zhang device
16 having a spherical or bulbous portion at the
17 tip of the nail, correct?

18 A. I don't recall addressing
19 specifically what the bulbous portion or the
20 nail looks like. I just tried to mimic, as
21 much as possible, Zhang's view.

22 Q. Well, looking at the views of the 3D
23 model you provide, you'd agree that there's --
24 you're showing a bulbous or spherical portion
25 of the Zhang nail, correct?

1 A. As I viewed Zhang's Figure 1058, with
2 the blue background, I see a -- a rounded head.
3 And I see a head that has a little bit of a
4 flap to it.

5 But it is primarily just a head
6 that I use to -- in the model.

7 Q. Now, the aperture you claim is formed
8 in Zhang's nail lies entirely within that
9 rounded head of Zhang's nail, correct?

10 A. Zhang, in his figure, shows the
11 aperture completely within the head of the
12 nail, including the groove.

13 Q. Let's turn to paragraph 40 of your
14 declaration. That would be on page 28.

15 A. Yes.

16 Q. In your declaration, in this section,
17 you opine that it would have been obvious to
18 tilt the tunnel shown in Cognet's reference so
19 that the aperture spans the top and side
20 exterior surfaces of Cognet's nail, correct?

21 A. I stated that [as read]:
22 "Cognet's invitation to
23 vary the proximal tunnel
24 angle, a POSA would have
25 wanted" -- "the POSA had

1 wanted a slightly shallower
2 tunnel angle to accommodate a
3 slightly different anatomy or
4 fracture cite than shown in
5 Cognet Figure 1, then an
6 obvious choice would have been
7 to tilt the tunnel so that the
8 aperture spans the top and
9 side exterior surfaces of
10 Cognet's device. "

11 Q. Yeah. So you're reading from
12 paragraph 40?

13 A. Yes.

14 Q. So in other words, looking at
15 Cognet's Figure 1 that you produced on the next
16 page in paragraph 40 and you've annotated, is
17 it your opinion that it would have been obvious
18 to modify Cognet's assembly such that the screw
19 lies along the purple line you have drawn there
20 rather than the blue line that the figure shows
21 it lying along?

22 A. Cognet suggests that the angle to his
23 device should -- could be varied if needed.

24 So he embodied having a variable
25 angle or an angle that can vary based on the

1 anatomy that -- or the fracture he's trying to
2 address.

3 So by Cognet's own invitation to
4 vary the proximal tunnel angle, a POSA would
5 know that varying the angle, say, from A1,
6 which is what Cognet shows in Figure 1, to,
7 say, a shallow angle like A2 -- angle A2 would
8 draw the bore running through Cognet's nail.
9 And it would draw the aperture to coincide with
10 both the top and through the side of Cognet's
11 nail.

12 Q. The modification you just described,
13 that results in the nail lying along that
14 purple line you have drawn in your annotated
15 figure, correct?

16 A. Yes. Angle A2 would coincide with a
17 the purple axis line of the bore.

18 Q. Okay. Now, if the screw in Cognet's
19 device lies along that purple line you've shown
20 here, the screw would be close to the articular
21 surface of the bone shown in Cognet's figure in
22 the upper right-hand side, correct?

23 A. I mean, I did not address in my
24 declaration the particular bone. So I did not
25 address that in my declaration.

1 Q. Well, you must have considered
2 whether -- where that screw would be moved in
3 relation to the bone when you proposed this
4 modification, did you not?

5 A. Well, Cognet is the one that is
6 suggesting that the angle to his -- that the
7 angle to his nail can be varied to address
8 various indications of fractures involved.

9 Q. Does Cognet specifically mention
10 which way the angle should be moved?

11 A. To my understanding and my
12 recollection, he is suggesting that -- let me
13 see. [As read]:

14 "Cognet instructs the
15 POSA to vary the angle of the
16 proximal tunnel for screw
17 depending on the anatomical
18 variations of the patients
19 being operated on and the
20 particulars of the
21 embodiment."

22 This is from Exhibit 1004,
23 paragraph 3, lines 10 through 18.

24 Q. Now, the angle can be varied in many
25 different ways, but Cognet doesn't tell you

1 specifically which way to change the angle,
2 correct?

3 A. I did not recall addressing that in
4 my declaration, only that [as read]:

5 "Cognet instructs a POSA
6 to vary the angle of the
7 proximal tunnel for screw
8 depending on the anatomical
9 variations of the patients
10 being operated on and the
11 particulars of the
12 embodiment."

13 Q. And it would be up to the surgeon to
14 consider the anatomical variations of the
15 patient being treated, correct?

16 A. I mean, I didn't recall addressing
17 the surgeon's view of that.

18 But Cognet is suggesting that
19 the tunnel -- the proximal tunnel can be varied
20 to account for the anatomical variations of the
21 patients being operated on.

22 Q. Well, did you ever consider in your
23 analysis whether a surgeon would want to avoid
24 driving Cognet's screw too close to the
25 articular surface of the bone, as shown in

1 Cognet's Figure 1?

2 A. Not being a doctor, I don't recall
3 addressing in my declaration of whether it's
4 close to the joint or not. So it's not
5 something that I considered.

6 Q. Well, wouldn't you say that it would
7 be a risk for the screw to be too close to the
8 joint -- close to the articular surface of the
9 bone shown in Cognet's Figure 1?

10 A. Again, I don't recall addressing that
11 specific instance in my declaration.

12 Q. Okay. Did you consider that in your
13 analysis before you reached your conclusions?

14 A. I followed Cognet's description and
15 invitation to vary the angle of the screw
16 tunnel to meet the particular anatomical
17 variations of the patient being operated on.

18 So I used that language to
19 create the annotated Cognet Figure 1 on page 29
20 showing the -- just a slight movement of or
21 angulation of the aperture would result in
22 having the aperture break through both the top
23 and sides of the nails.

24 So it's not unreasonable, if you
25 vary, the angle to create this condition.

1 Q. Setting aside Cognet's teaching, did
2 you consider anything else in this obviousness
3 analysis in composing this modification?

4 A. Other than I cited other instances
5 where other POSAs have used variable angles
6 to -- with an aperture that cuts into both the
7 top and sides of the implant.

8 Q. Does your analysis here with respect
9 to obviousness over Cognet and/or other
10 references consider at all risks to the patient
11 in making this modification of changing the
12 angle of the screw?

13 A. I do not recall addressing that in my
14 declaration.

15 ATTORNEY BAPNA: Okay. I'm
16 going to transmit to you an exhibit that's
17 been marked in this case as Exhibit 1060
18 previously.

19 - - -
20 (Whereupon, Exhibit 1060 was
21 previously marked for identification.)

22 - - -
23 ATTORNEY BAPNA: Please let me
24 know when you have that.

25 THE WITNESS: Yes, I have it.

1 BY ATTORNEY BAPNA:

2 Q. For the record, you are looking at
3 U.S. Patent Application Publication Number
4 2011/0022173 to Melkent et al.; is that right?

5 A. Yes.

6 Q. And in your third declaration, you've
7 opined that one or more combinations involving
8 the Cognet and the Melkent references render
9 obvious one or more of the substitute claims,
10 right?

11 A. Yes.

12 Q. Now, Melkent's implant has a
13 different design than that of the bone fixation
14 device claimed in the '166 patent, right?

15 A. Can you repeat the question again?

16 Q. Melkent's implant has a different
17 design than that of the bone fixation device
18 claimed in the '166 patent, right?

19 A. Melkent describes his device as
20 having screw passages to allow with apertures
21 and passages for these screws.

22 So this -- this is an implant
23 for -- that allows screw passages passing
24 through the implant.

25 Q. And looking at the figures of

1 Melkent, you'd agree that that device looks
2 quite different than what the '166 patent
3 claims, correct?

4 A. I mean, I --

5 ATTORNEY KAMHOLZ: Object to
6 form.

7 THE WITNESS: I don't recall --
8 Sorry.

9 ATTORNEY KAMHOLZ: Objection.
10 Form.

11 THE WITNESS: I don't recall
12 addressing Melkent's purpose for his
13 device, other than it allows bone screw
14 fixation internally as an implant.

15 BY ATTORNEY BAPNA:

16 Q. Melkent's implant has a different
17 application than that of the device claimed in
18 the '166 patent, right?

19 A. I mean, Melkent and Gooch, as another
20 POSA, teaches us [as read]:

21 "about how to position
22 apertures for screws that
23 secure implants to vertebral
24 bone as relevant and analogous
25 to intramedullary nail systems

1 such as Cognet, because such
2 design is" -- "such design
3 considerations are
4 bone-agnostic."

5 And I do [as read]:
6 "agree with Dr. Ledet's
7 testimony in his Exhibit 1055
8 that many aspects of his own
9 patents that happen to be
10 described in vertebral
11 applications are, in fact,
12 'agnostic to the specific
13 location in the body' and
14 'generic for bones.'"

15 Q. Now, you just read a passage from
16 paragraph 40 of your declaration into the
17 record, right?

18 A. The very end of paragraph 40, yes.

19 Q. Okay. In that last sentence, you
20 said you agree with Dr. Ledet's testimony
21 that -- about his own patents; is that right?

22 A. I agreed with Dr. Ledet's testimony
23 that in many aspects of his own patents that
24 describe vertebral applications, such as that
25 in Melkent shown here, that, in fact, they are

1 generic for bones. They are agnostic to the
2 specific location in the body.

3 Q. Did you review Dr. Ledet's patents?

4 A. Yes, I have taken a look at some of
5 his patents. And I took a look at his last
6 deposition, which is where I used this
7 particular language from.

8 Q. Which -- which patents of his did you
9 look at?

10 A. Well, he has many cited in his CV,
11 but most -- the majority of his work happens to
12 be in spine, and so is mine.

13 Q. How many of his patents did you look
14 at?

15 A. I don't recall the exact number or
16 addressing that in my declaration.

17 Q. You didn't cite any of his patents in
18 your declaration, did you?

19 A. No, I do not believe I recall
20 addressing that in my declaration.

21 Q. Now, Melkent's implant is intended to
22 be attached to a bone, right, for example,
23 vertebrae?

24 A. They're used to fixate vertebrae
25 together with the use of -- with the use of

1 screws.

2 Q. And more specifically, Melkent's
3 implant is used as a spacer to be positioned
4 within an intervertebral space formed between
5 two vertebral members, right?

6 A. Yeah, I didn't comment exactly how
7 Melkent is using his device in my declaration,
8 just that -- I wanted to cite how he uses his
9 screws and his device to angulate and provide
10 apertures that run through both the top and
11 sides of his implant.

12 Q. Well, in contrast to Melkent, the
13 bone fixation device claimed in the '166 patent
14 is not meant to be used for vertebrae, right?

15 A. But as I cited before --

16 Q. Yes or no, Mr. Dominguez?

17 A. These devices are agnostic to the
18 specific location in the body and are generic
19 for bones.

20 Q. Is it your opinion -- is it your
21 opinion that the device claimed in the '166
22 patent can be used for vertebrae? Is that your
23 opinion?

24 A. I do not recall addressing that in my
25 declaration.

1 Q. Well, what is your opinion, sitting
2 here today?

3 A. I do not address that in my
4 declaration.

5 Q. So you don't have an opinion one way
6 or the other whether the device claimed in the
7 '166 patent is meant to be used for vertebrae?
8 You don't have an opinion?

9 A. I do not recall addressing that in my
10 declaration.

11 Q. Okay. Do you know whether the
12 Melkent reference uses the phrase "bone
13 fixation" at all?

14 A. I don't recall addressing that in my
15 declaration.

16 Q. Do you agree that Melkent's implant
17 is not meant to be substantially implanted
18 within a bone?

19 ATTORNEY KAMHOLZ: Objection.
20 Form.

21 THE WITNESS: I do not recall
22 addressing that in my declaration.

23 BY ATTORNEY BAPNA:

24 Q. Do you know one way or the other,
25 sitting here today?

1 A. As I said, I do not recall addressing
2 whether Melkent's implant can be inserted in a
3 bone or between bones.

4 Q. Do you know whether the bone fixation
5 device claimed in the '166 patent is meant to
6 be implanted entirely or substantially entirely
7 within a bone?

8 ATTORNEY KAMHOLZ: Objection.

9 Form.

10 THE WITNESS: I don't recall
11 addressing that specifically in my
12 declaration.

13 BY ATTORNEY BAPNA:

14 Q. Well, you've studied the '166 patent,
15 haven't you, right?

16 A. I have reviewed the '166 patent, yes.

17 Q. Okay. So is the device claimed in
18 that patent meant to be substantially or
19 entirely implanted into a bone?

20 ATTORNEY KAMHOLZ: Objection.

21 Form.

22 THE WITNESS: I do not recall
23 addressing that in my declaration.

24 ATTORNEY BAPNA: Okay. I'm
25 going to transmit to you an exhibit that's

1 been previously marked in this case as
2 Exhibit 1063.

3 - - -

4 (Whereupon, Exhibit 1063 was
5 previously marked for identification.)

6 - - -

7 BY ATTORNEY BAPNA:

8 Q. Please let me know when you have that
9 up on your screen.

10 A. Yes, I have it up.

11 Q. Okay. For the record, you're looking
12 at U.S. Patent Application Publication
13 Number 2008/0221623 to Gooch, right?

14 A. Yes. Correct.

15 Q. Now, you've opined in this case that
16 one or more accommodations involving Cognet and
17 Gooch render obvious one or more of the
18 substitute claims, right?

19 A. Yes.

20 Q. And Gooch describes a bone-anchoring
21 mechanism, right?

22 A. I mean, Gooch discloses that -- the
23 bore for a bone screw, which may be positioned
24 on the top side or both top and sides of a bone
25 anchor.

1 Q. So was that a yes or no?

2 Do you agree that it describes a
3 bone-anchoring mechanism or does it not?

4 A. Gooch discloses that the bore for a
5 bone screw may be positioned on the top side or
6 both top and side of a bone anchor.

7 So he is calling it a bone
8 anchor.

9 Q. Okay. And Gooch's mechanism can be
10 used on vertebrae, correct, as disclosed in the
11 reference?

12 A. I did not recall addressing where
13 those devices are being used in -- in my
14 declaration.

15 Q. Is that because your opinion these
16 devices are bone-agnostic?

17 A. I don't recall using that term in
18 my -- in addressing Gooch in my declaration.

19 Q. I'm pretty sure you used the word
20 "bone-agnostic" in the same sentence as Melkent
21 and Gooch in your declaration, right?

22 If you look at paragraph 40, on
23 page 29 and 30 -- bottom of page 29.

24 A. [As read]:

25 "Melkent and Gooch's

1 teachings about how to
2 position apertures for screws
3 that secure implants to
4 vertebral bones are relevant
5 and analogous to
6 intramedullary nail systems
7 such as Cognet."

8 So, yes, I did use that with
9 reference to Melkent and Gooch.

10 And I cited Gooch's Figure 16B,
11 Gooch Figure 18, and Gooch Figure 20 on the top
12 of page 26.

13 Q. Yes. So did you consider the
14 applications that Gooch teaches that its device
15 should be used in, which bone or which types of
16 procedures?

17 Did you consider that in your
18 analysis?

19 A. As I stated in my analysis, that --
20 they're considered to be bone-agnostic.

21 Q. Okay. So is it fair to say that in
22 your analysis, it did not matter what the
23 application was for Gooch's device or Melkent's
24 device?

25 A. No. My interpretation is that that's

1 what bone-agnostic would represent, that you
2 can use this device in many bones.

3 Q. Well, could you use Gooch's device
4 interchangeably with the device of the
5 '166 patent for whatever procedures the
6 '166 patent describes it as being used for?

7 A. I mean, Gooch explains that the screw
8 can be inserted directly, laterally, or
9 obliquely, as needed to achieve the required
10 screw angle. So [as read]:

11 "In my opinion, Cognet
12 instructs the POSA to modify
13 the screw tunnel as needed" --
14 "the screw tunnel angle as
15 needed, and both Melkent and
16 Gooch also provide clear
17 evidence that a POSA knew that
18 the screw angle" -- or "the
19 screw tunnel angle could be
20 varied as such" -- "as
21 required for a particular use
22 regardless of whether the
23 chosen angle might be the
24 tunnel aperture to be
25 positioned on a top surface, a

1 side surface, or on both

2 simultaneously."

3 Q. Now, Gooch's Figure 20 doesn't
4 actually show the entire bounds of the aperture
5 you claim is formed, correct?

6 A. What I'm showing in Gooch Figure 20
7 in my declaration is really just a snapshot of
8 a closeup of the Gooch implant.

9 But it does show what you see
10 there, that it has a -- a screw traversing the
11 anchor through an oblique -- in an oblique
12 manner to achieve a required angle. And this
13 oblique manner cuts through both the top and
14 side surfaces and/or both surfaces
15 simultaneously in this illustration.

16 Q. Well, my question is different.

17 In Figure 20 of Gooch, you don't
18 see the bounds of the entire aperture, correct?

19 A. I don't understand your question.

20 Q. Okay. You're seeing one side of the
21 aperture in Figure 20, correct, but not the
22 entire side because it's being blocked by the
23 screw?

24 Do you agree with that?

25 A. I mean, this is a two-dimensional

1 illustration by Gooch showing a side view, if
2 you will, or close to a side view of his
3 device.

4 And what I see is an anchor, and
5 then I see a screw running through the top of
6 the anchor. And it's traversing the top and
7 the sides in an oblique manner to achieve the
8 desired screw angle.

9 Q. Figure 20 is not an isometric view,
10 right?

11 A. I wouldn't call it an isometric view.
12 I would call it more of a front view.

13 Q. Okay.

14 A. Just like Figure 18, that's more of a
15 front view.

16 Q. And you'd agree that in Figure 20 of
17 Gooch, the screw is drawn such that at least
18 part of the aperture lies behind the screw?

19 A. I don't recall addressing that in my
20 declaration.

21 Q. Okay. But you've addressed Gooch
22 teaching an aperture that you contend is going
23 through the top and side of the nail, right?

24 A. Yeah, I describe Gooch -- Gooch
25 explains that the screw can be inserted

1 directly, meaning through the top; laterally,
2 meaning from the side, as he shows in
3 Figure 18; or obliquely, as he shows in
4 Figure 20.

5 Q. Now, you described what you --
6 withdrawn.

7 Now, in your opinion, Gooch
8 Figure 20 shows an aperture that goes through
9 the top and side of the nail, right?

10 A. Yeah. Gooch shows a screw that is
11 passing obliquely through the top and side of
12 the nail.

13 Q. Okay. And that aperture --
14 participate of that aperture lies behind the
15 screw that's shown in Gooch's Figure 20,
16 correct?

17 A. I don't recall addressing that in my
18 declaration.

19 Q. Well, did you consider it?

20 If you opined about where the
21 aperture lies, did you ever consider that part
22 of it lies behind the screw, as shown in
23 Figure 20 of Gooch?

24 A. Gooch explains that the screw can be
25 inserted in an oblique manner based on the

1 angle -- the required angle that he wants to
2 achieve.

3 Q. And in this two-dimensional view, you
4 don't -- you don't know for sure whether the
5 screw in Gooch's Figure 20 is obstructing the
6 view of part of the aperture in the nail,
7 correct?

8 A. I don't recall addressing that in my
9 declaration.

10 Q. Do you have an opinion on whether the
11 screw obscures part of the view of the aperture
12 in Figure 20?

13 A. No. I don't recall addressing that
14 in my declaration.

15 Q. Okay. You cited paragraph 98 of
16 Gooch in your declaration, right, in
17 paragraph 36 of your declaration?

18 Do you see that?

19 A. Yes. I cited Exhibit 1063,
20 paragraphs 94 through 98.

21 Q. Okay. Let's go to paragraph 98,
22 please, of Gooch.

23 Please let me know when you're
24 there.

25 A. I'm there.

1 Q. That paragraph doesn't say anything
2 about the screw in Figure 20 going through an
3 aperture to exterior surfaces of that bone
4 anchor of Gooch, correct?

5 A. Gooch states -- and I quote --
6 [as read]:

7 "The screw or bolt 2010
8 may be inserted into the
9 anchoring mechanism" -- "2010
10 may be inserted into the
11 anchoring mechanism 2020 at an
12 angle that may be oblique to
13 the opening 2030 of the
14 anchoring mechanism 2020,
15 which may thereby allow the
16 screw or bolt 2010 to be
17 placed at a proper angle for
18 use with, for example, spinal
19 plates or other
20 instrumentation while
21 achieving improved gripping,
22 purchase, or anchoring of the
23 screw in the structural
24 tissue."

25 Q. And in a passage that you just read

1 in from paragraph 98 doesn't explicitly talk
2 about whether the aperture that may be formed
3 lies on any particular exterior surface of the
4 nail, correct?

5 A. I do not recall addressing that in my
6 declaration.

7 ATTORNEY BAPNA: Okay. We've
8 been going well over an hour. Let's take
9 a ten-minute break.

10 Off the record now, please.

11 - - -

12 (Whereupon, a short recess was
13 taken.)

14 - - -

15 ATTORNEY BAPNA: At this time, I
16 have no further questions for
17 Mr. Dominguez, subject to any recross.

18 ATTORNEY KAMHOLZ: Can we take a
19 half-hour recess?

20 ATTORNEY BAPNA: That's okay.
21 Yep.

22 ATTORNEY KAMHOLZ: So we'll go
23 off the record again.

24 How about we come back on the
25 record at -- I guess half an hour would

1 put us at 2:12.

2 - - -

3 (Whereupon, a lunch recess was
4 taken.)

5 - - -

6 ATTORNEY KAMHOLZ: I have no
7 questions for the witness.

8 ATTORNEY BAPNA: Thank you.

9 Thank you, Mr. Dominguez, for
10 your time.

11 No further questions.

12 THE WITNESS: Thank you,
13 Mr. Bapna. Nice to speak with you.

14 ATTORNEY BAPNA: Likewise.

15 THE COURT REPORTER: Did you
16 want an immediate rough draft?

17 ATTORNEY KAMHOLZ: No, thank
18 you.

19 ATTORNEY BAPNA: End of the day
20 would be great.

21 - - -

22 (Whereupon, the deposition
23 was concluded at 2:10p.m.)

24 - - -

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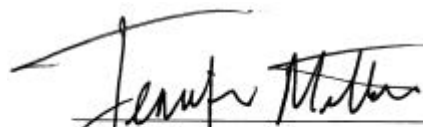
ATTORNEY'S NOTES

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
deposition of LEONEL DOMINGUEZ, taken on
8/14/24 and that this is a true and correct
transcript of same.


Jennifer Miller, RMR, CCR, CRR
and Notary Public

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