

John D. Pratt, Ph.D. - March 10, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BARRETTE OUTDOOR LIVING, §
INC., §
Plaintiff, §
v. § Civil Action No.
§ 3:21-CV-02008-E
FORTRESS IRON, LP AND §
FORTRESS FENCE PRODUCTS, §
LLC, §
Defendants. §

ORAL AND VIDEOTAPED DEPOSITION OF
JOHN D. PRATT
MARCH 10, 2022
(REPORTED REMOTELY)

ORAL AND VIDEOTAPED DEPOSITION of JOHN D.
PRATT, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on the 10th of March,
2022, from 9:05 a.m. to 12:18 p.m., before Kim M.
Dickman, CSR in and for the State of Texas, reported
by machine shorthand, in the City of Laguna Niguel,
State of California, pursuant to the Federal Rules of
Civil Procedure.

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Mr. Austin McGough, Videographer

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P R O C E E D I N G S

(Media 1.)

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

THE VIDEOGRAPHER: Going on the record at 9:05 a.m. Pacific time. Today is Thursday, March 10th, 2022. This is the beginning of tape number 1, volume 1.

We are here for the deposition of John D. Pratt in the case styled Barrette Outdoor Living, Inc. versus Fortress Iron, LP, et al.

This deposition is taking place remotely. The witness is located at Laguna Niguel, California.

My name is Austin McGough, legal video specialist, and the court reporter is Kim Davenport. We're with Dickman Davenport, 4228 North Central Expressway, Suite 101, Dallas, Texas 75206.

Will counsel and all those present please state their appearance for the record.

MR. GARDNER: This is Arthur Gardner for the plaintiff and with me also is David Henry and also Eric Tautfest, both of those are with the Gray Reed firm and then also from my firm is Daniel Hong.

MR. STORM: This is Paul Storm on behalf of Fortress and with me is Jake May and Chance Moser.

THE REPORTER: Is that all the

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1 appearances?

2 MR. GARDNER: I believe so, yeah.

3 JOHN D. PRATT,

4 having been first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. GARDNER:

7 Q. Dr. Pratt, I assume that you've been deposed
11:07:30 8 many times before from your CV and so you probably are
9 aware of the ground rules. The court reporters are
10 going to be taking down everything including by video
11 recording and it's very important that we have a clean
12 record.

13 I speak somewhat slowly and if you will
14 wait until I finish my question before you begin to
15 answer, we'll get a cleaner record. On top of that,
16 if you'll wait until my -- my question is finished and
11:07:58 17 you pause a moment, that will give Mr. Storm an
18 opportunity to interject any objection that he may
19 choose to introduce.

20 And it's important that you answer the
21 question that was asked and so make sure that you
22 understand the question so that you can give clear
23 testimony.

24 Please give us your full name.

25 A. John Dillworth Pratt.

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1 Q. And your home address, please?

11:08:29 2 A. 44 Argos, A-R-G-O-S, Laguna Niguel,
3 California, 926 --

4 Q. And what's your work address?

5 A. The work address is the same as my home
6 address. I work out of my house.

7 Q. As you testify today, do you have any medical
8 condition or any other situation that would prevent
9 you from giving accurate and full testimony?

10 A. I do not.

11 Q. Do you take any medication that might affect
12 your testimony?

13 A. I do not.

11:09:00 14 Q. How many times have you been deposed before?

15 A. 50 or maybe -- between 50 and 53.

16 Q. And how many times have you been -- have you
17 testified in a court matter?

18 A. 13 or 14 times.

19 Q. Have you ever had your testimony refused or
20 excluded or rejected by a court for any reason?

21 A. Not that I know of.

11:09:28 22 Q. Is there anyone in communication with you
23 while you're giving your testimony today?

24 A. No.

25 Q. So there's no one else in the room and you're

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1 not going to be using your cell phone to communicate
2 with anybody or anything like that, correct?

3 A. That's correct.

4 Q. All right. Dr. Pratt -- do you prefer to be
5 called Dr. Pratt?

6 A. Generally I'm referred to as Dr. Pratt for
7 deposition testimony.

8 Q. Dr. Pratt, how do you charge for the type of
9 work you're doing in this case?

11:10:00 10 A. How do I charge or how much do I charge?

11 Q. Well, start with how do you charge?

12 A. I guess I don't understand the question.

13 Q. Do you charge by the hour?

14 A. I charge by the hour with a minimum for trial
15 and deposition testimony.

16 Q. And what's the minimum for deposition
17 testimony?

18 A. I believe it's four hours in this matter.

19 Q. Okay. Do you have a minimum charge of say
11:10:28 20 \$10,000 or some number for providing an opinion in a
21 matter?

22 A. My charging protocol, if you will, depends on
23 the matter. For this matter, I don't -- I don't
24 believe there's a retainer. No, I don't have a
25 minimum for a -- for an opinion. I think this matter

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11:10:58 1 is strictly an hour-by-hour charge. There's a
2 minimum, like I said a few minutes ago, for deposition
3 and trial testimony and I think there's an eight-hour
4 per diem for overnight travel away.

5 Q. How much time did you spend on the matter up
6 to now?

7 A. I didn't -- I don't know. I work a dozen
8 matters at once so I don't know for this case how much
11:11:28 9 has been charged. I believe -- I believe there's an
10 outstanding invoice. My first invoice for this matter
11 of a little over \$5,000, that would be for the month
12 of -- it does not include any charges for March, it
13 would be mainly February and earlier, so that might be
14 10 or 15 hours. I just don't know. I didn't -- I
11:12:00 15 didn't look it up before this deposition.

16 Q. When did you start working in this matter?

17 A. If you'd like me to access my computer and
18 look at my billing records, I can answer that
19 question, but I don't memorize those numbers.

20 Q. Was it before the new year?

21 A. I don't recall. Probably not.

11:12:28 22 Q. Am I correct that there was a time when you
23 didn't do expert witness and work, but were a
24 practicing engineer; is that right?

25 A. Up through about 1998, 1999, I was strictly

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1 employed in industry and when I left Textron in 2000
2 to go to work for Hartwell aerospace as their
11:13:00 3 engineering executive, I continued as a retained
4 expert in a case against Textron, a helicopter crash,
5 for two or three years.

6 So my first work as a retained expert
7 would -- would have taken place in around June or so
8 of 2000 and then I left -- I retired from industry in
11:13:26 9 2005 and took on work both as an industry consultant
10 and a retained expert for litigation consulting at
11 that point.

12 Q. And say the last four or five years, how much
13 of your income is derived from consulting as an
14 engineer back to industry and how much of it is for
15 consulting in litigation matters in one way or
16 another?

17 A. Since late, I want to say October of 2017
11:13:54 18 until the present time, my earned income is strictly
19 from litigation consulting.

20 Q. You mentioned that you did work for the
21 aerospace industry, what companies did you work for in
22 aerospace?

11:14:28 23 A. I was employed -- employed in industry for --
24 and again, these companies change names several times
25 during the span of time I worked for them, but Olympic

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1 Fastening Systems, which used to be Olympic Screw &
2 Rivet, I worked there for nine years, from about '69
3 through '78; Monogram Aerospace Fasteners, where I
4 went to right after Olympic and I worked there for
11:14:56 5 nine years until, I think it was 1988 at which time I
6 went to work for Cherry Division with Textron, Textron
7 Aerospace Fasteners, they changed the name a few
8 times, but it was the Cherry Division of Textron, and
9 I worked there until 2000, that was 12 years, and I
11:15:26 10 left in 2000 around midyear to go to work for Hartwell
11 aerospace where I worked until about mid 2005.

12 Q. What kind of -- what kind of technology did
13 Hartwell aerospace do?

14 A. Hartwell did aerospace mechanisms, and these
15 included mostly latching mechanisms and hold open
16 mechanisms for aircraft and space vehicles, for
11:16:00 17 example, a 730 -- a Boeing 737 commercial transport
18 airplane has thousands of different type -- thousands
19 of latches, hundreds of different types, everything
20 from the overhead bin latches to the engine decel
21 latches, fuel access door latches and so Hartwell was
22 a leader in the design and supply of those types of
23 mechanisms.

11:16:29 24 Q. So if somebody called you a rocket scientist,
25 they might not be far off?

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1 A. It would be far off. I'm not a rocket
2 scientist. I don't do astrophysics and things like
3 that or overload dynamics, I'm a mechanical engineer
11:16:47 4 and I work on structures.

5 (Exhibit No. 1 marked.)

6 Q. I believe now you should be seeing an exhibit
7 we've marked as Exhibit Pratt 1, do you see that,
8 Dr. Pratt?

9 A. I do.

10 Q. And is that your CV?

11 A. Yes.

12 Q. Okay. Do you believe this represents a
13 fairly complete and accurate statement of your
14 relevant experience and education?

15 A. Yes.

11:17:58 16 Q. Does the -- does your CV mention any special
17 expertise that you might have in the design and
18 manufacturing of metal fencing?

19 A. It does not.

20 Q. Prior to your involvement in this case, have
21 you ever had any experience in the design and
11:18:24 22 manufacturing of metal fencing?

23 A. No.

24 Q. Prior to your involvement in this case, have
25 you ever held yourself out as an expert in the design

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1 and manufacture of metal fencing?

2 A. I have not.

3 Q. Dr. Pratt, do you consider yourself an expert
11:18:56 4 in multiple areas of engineering?

5 A. Yes.

6 Q. Do you consider yourself an expert in
7 virtually all areas of mechanical engineering?

8 A. No.

9 Q. What areas of mechanical engineering are you
10 not an expert in?

11 A. Well, I wouldn't know.

12 Q. All right. Well, then let's turn it the
13 other way. So what areas of mechanical engineering do
14 you consider yourself to be an expert in?

11:19:28 15 A. Well, I'm an expert in -- I hold myself out
16 to be an expert in the design of mechanical systems
17 and that includes a lot of disciplines. It includes,
18 you know, analysis, strength of materials, statics,
19 dynamics, forming of metals, certain metallurgical
11:19:56 20 aspects, finite element analyses, kinematics.

21 Q. But while that -- while you -- but the
22 category that you mentioned of mechanical systems,
23 wouldn't that encompass just about any mechanical
24 structure that has more than one component?

25 A. It will certainly encompass a lot of them. I

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11:20:27 1 don't know what it doesn't encompass.

2 Q. Well, for example, you know, are you an
3 expert in automatic transmissions for automobiles?

4 A. I am not.

5 Q. So there would be lots of mechanisms for
6 which you would not be an expert?

7 A. That is correct.

8 Q. When were you first contacted about this
9 case?

10 A. I'd have to go back and look at my billing
11:20:57 11 records, I don't recall.

12 Q. Do you recall who contacted you?

13 A. I believe I was contacted through IMS
14 Experts.

15 Q. Is IMS Experts an expert referral
16 organization that matches up testifying experts with
17 legal matters?

11:21:25 18 A. It is.

19 Q. What was your first contact with the lawyers
20 for the Fortress companies?

21 A. It was a couple months ago, I just don't
22 recall the date.

23 Q. No, I'm not asking for the date, Dr. Pratt,
24 but what was the nature of the contact? Did you get a
11:21:58 25 phone call, an e-mail where you -- did you have a

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1 meeting? What was the first contact that you had with
2 the lawyers for Fortress?

3 A. It was a telephone call set up by IMS so that
4 the lawyers from -- for Fortress could interview me
5 over the phone.

6 Q. Was there any discussion at that time of
7 whether you were an expert in the field of metal
11:22:27 8 fences?

9 A. I don't recall.

10 Q. What's your understanding of what your role
11 is in this case right now?

12 A. Well, at the moment it's to provide opinions
13 and testimony regarding certain claim terms of the
14 asserted patents.

11:22:58 15 Q. Have you provided any other services besides
16 those up to this point?

17 A. I have not.

18 Q. Do you understand the difference between a
19 testifying expert and a nontestifying litigation
20 consultant?

21 A. I do.

22 Q. Have you -- have you functioned as a
23 nontestifying litigation consultant in this matter
24 prior to today?

25 A. Not in this matter, no.

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11:23:31 1 Q. Do you anticipate functioning or providing
2 opinions other than the ones you've already provided?
3 Let me restate that question.

4 In this matter, do you anticipate
5 providing opinions, other than the ones included in
6 your declaration?

7 A. Well, I think there's a possibility that I
11:24:00 8 will be asked to provide opinions relating to the
9 validity of the asserted patents and infringement of
10 the accused product.

11 Q. Am I correct that your declaration already
12 contains some opinion or opinions relating to validity
13 or invalidity of the claims; is that right?

11:24:24 14 A. That's correct.

11:24:59 15 (Exhibit No. 2 marked.)

16 Q. (By Mr. Gardner) I'll show you now what's
17 been marked as Exhibit Pratt 2 and ask you if you
18 recognize this?

19 A. I do.

20 Q. Is this something that you prepared?

21 A. It is.

22 Q. And what is it, sir?

23 A. It's just a summary of my deposition and
24 trial testimony for the last four years.

25 Q. Is this disclosure complete and accurate as

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1 far as you know?

11:25:29 2 A. Yes. I don't believe it's changed since
3 February 28th.

4 Q. Are there any additional matters that should
5 be on this list that are not?

6 A. No. It's a four-year list.

7 Q. And are the descriptions of each of the
8 matters listed accurate?

9 A. They should be. I don't have any reason to
11:25:50 10 think that they're not.

11 Q. Let me go back and say something I should
12 have said at the beginning, which is, and you may --
13 you're probably aware of this from prior depositions,
14 but this is not a physical endurance test and if at
15 some point you become tired or need to take a break,
16 use the restroom or get something to eat, we can
11:26:25 17 certainly accommodate you, so you're in as control of
18 the deposition as much as we are. So we want you to
19 be comfortable, so if you need to take a break at any
20 point, just let us know and we'll work with you the
11:26:41 21 best we can.

22 (Exhibit No. 3 marked.)

23 Q. (By Mr. Gardner) Dr. Pratt, I'm showing you
24 now what's been marked for identification purposes as
25 Pratt Exhibit 3, do you recognize this document?

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1 A. I do.

2 Q. And what is it, sir?

3 A. It's a declaration by me.

4 Q. Did you write this?

5 A. I wrote large parts of it and edited parts
11:27:27 6 that I didn't write.

7 Q. Can you tell us which parts you did not
8 write?

9 A. No.

10 Q. Who wrote the parts that you didn't write?

11 A. Well, I think I can get you an answer to your
12 question if you let me phrase it a little differently.
13 I prepared the front matter and the aft matter
14 regarding my qualifications and background and my
11:27:57 15 deposition testimony and the exhibits.

16 The first draft of all the central matter
17 was prepared by attorneys for Foley, Fortress, and the
18 draft was sent to me and I provided edits. We went
19 back and forth several times with me proposing edits
20 and changing text for that central matter that was
11:28:25 21 originally drafted by Mr. Storm and his colleagues.

22 The one part that I probably didn't
23 provide any input to would have been the section on
24 the legal section.

25 Q. Could you scroll through the pages and direct

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1 me to the part that you think you didn't provide any
2 input on?

11:29:00 3 A. I'm not sure. Can I scroll through here?

4 Q. Yes.

5 A. Well, the only thing showing up is the cover
6 page. I have a hard copy, I can -- it's easier for me
11:29:21 7 to go to that.

8 THE VIDEOGRAPHER: And, Mr. Pratt, if you
9 would, would you be able to lower your camera again so
10 we can see you?

11 A. (Witness complies.)

12 THE VIDEOGRAPHER: Thank you, sir.

11:29:59 13 A. You're going to have to bear with it for a
14 minute because I have to bend over to look at this
15 document.

16 Q. (By Mr. Gardner) You should be able to use
17 the scroll wheel on your mouse to scroll down through
18 the document. In addition, at the bottom of the page
19 of the document should be -- you'll see a gray button
20 that has page 1/43 in it and you should be able to
21 click on the right arrow and scroll to the next page
22 and so on. Do you see that?

11:30:29 23 A. No, but if you let me alone, I would have
24 been done by now.

25 Q. Yes, Doctor.

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1 A. Okay. Page 13, claim interpretation and
2 indefiniteness.

3 Q. So you're referring then to paragraphs 38 and
4 39 and 40?

5 A. Yes.

11:30:58 6 Q. What about paragraph 41?

7 A. You asked me what sections of this
8 declaration I did not edit?

9 Q. Correct.

10 A. It is paragraphs 38, 39, and 40. If there
11 were other paragraphs in here I didn't edit, I don't
12 recall.

11:31:25 13 Q. If you would, then, turn to page -- let's
14 start with page 6 and you'll see the heading that
15 begins with A and then the words, the '965 patents
16 claims and then after that there's paragraph 18 that
17 starts to talk about the '965 patent.

18 A. I see that.

19 Q. Did you write paragraph 18 or was that
11:31:53 20 provided to you?

21 A. That would have been provided to me.

22 Q. On the next page, what about paragraph 19,
23 was that -- did you write that or was that provided to
24 you?

25 A. It was provided, but I don't recall if I had

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1 any edits to it or not.

2 Q. Turning to the next page, did you write
11:32:28 3 paragraph 20 or was that provided to you?

4 A. I'm quite sure that would have been provided
5 to me.

6 Q. Was paragraph 21 written by you or provided
7 to you?

8 A. Again, it was provided, but I don't recall if
11:32:53 9 I had any edits.

10 Q. Same question for paragraph 22 on the next
11 page, did you write it or was it provided to you?

12 A. I'm quite sure that would have been provided
13 to me and to the extent I didn't agree with it, I
14 don't think -- to the extent I agreed with it, it
15 wouldn't have been any edits; if I did not agree with
16 it, I would have suggested some edits.

11:33:30 17 Q. Regarding paragraph 23 on page 9 of this
18 exhibit, which is your declaration, did you write
19 paragraph 23 or was it provided to you?

20 A. Again, I think it would have been provided to
21 me and to the extent I had any disagreements with it,
22 I would have requested some edits.

23 Q. Still looking at Exhibit Pratt 3, which is
11:33:57 24 your declaration, and in particular paragraph 24 on
25 page 9, did you write that paragraph or was it

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1 provided to you?

2 A. It would have been provided to me; to the
3 extent I had any disagreements with the original
4 provision or with the original text, I would have
5 requested edits.

6 Q. Turning now to page 11 of Exhibit 3,
7 paragraphs 26 through 30, which of these paragraphs
11:34:28 8 were written by you?

9 A. Originally these would have been written and
10 provided by counsel for Fortress; to the extent I had
11 any edits or had any disagreement with any of it, I
12 would have provided edits back to Fortress -- to
13 counsel for Fortress.

11:34:57 14 Q. Let's turn to page 12 of Exhibit 3, which has
15 the heading Patent Law Standards. Did you write
16 paragraph 34?

17 A. No.

18 Q. Did you write paragraph 35?

19 A. No.

20 Q. Did you write paragraph 36?

21 A. No.

11:35:26 22 Q. Did you write paragraph 37?

23 A. No.

24 Q. Let's turn to page 13 of Exhibit 3, Exhibit
25 Pratt 3, which is your declaration. Did you write

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1 paragraph 38?

2 A. No.

11:35:49 3 Q. Did you write paragraph 39?

4 A. No.

5 Q. Did you write paragraph 40?

6 A. No.

11:36:14 7 Q. Did you write paragraph 41?

8 A. My recollection is claims paragraphs 41 and
11:36:56 9 the next several paragraphs were provided by counsel
10 after our discussion about these claim terms.

11 Q. But at least --

12 A. I don't -- I don't recall -- I don't recall
13 if I suggested any edits to the original submission.

14 Q. Of the paragraphs we've gone over so far, do
15 you recall any specific edits that you made to any of
16 these paragraphs?

17 A. I do not.

18 Q. How would we know what of this is your own
11:37:28 19 original thinking and how much of this came from the
20 attorneys?

21 A. I don't know. What I can say is that if I
22 didn't agree 100 percent with what was provided by the
23 attorneys, it wouldn't have ended up in my declaration
24 or I wouldn't have signed it.

25 Q. Do you have any recollection of having

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11:37:57 1 suggested some edits to the attorneys that were not
2 accepted by the attorneys?

11:38:23 3 A. I can't think of -- I can't think of anyone.

4 Q. So I believe we talked about paragraph 41.
5 If you would, turn to page 14 of Exhibit Pratt 3. Did
6 you -- did you write paragraphs 42 and 43?

11:38:59 7 A. I think that the typing was done by attorneys
8 for Fortress, but it was done, again, with my input
9 through Microsoft meetings like the Zoom or telephone
10 calls regarding these forces. There could have been
11 some subsequent edits by myself as well, I just don't
11:39:28 12 recall, but I know I was heavily involved with the
13 text that went into these paragraphs.

14 Q. Let's flip over to the next page, which is
15 page 15 of Exhibit Pratt 3 and ask you to explain for
16 us whether paragraphs 44 through 47 were written by
11:39:55 17 you or provided to you by the lawyers.

18 A. Some of that, I believe, was written by me,
19 but put into the final form by the attorneys.

20 Q. Do you know which parts would have been
11:40:27 21 suggested by you?

22 A. No.

23 Q. Moving to the next page, which is page 16 of
24 Exhibit Pratt 3, there are paragraphs 48 through 52.
25 Which of these paragraphs were written by you and

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11:40:51 1 which were drafted by the attorneys?

2 A. Some of this was provided by me to the
3 attorneys who put it into the final form.

4 Q. Which parts?

5 A. Discussion regarding bonding and lubricants,
6 the fact that it's fasteners, you know, two parts
7 connected with fasteners can be still made to slide
11:41:28 8 when the fastener rotates or the fastener breaks, that
11:41:31 9 was all provided by me. Some of my input was provided
10 on these Zoom type meetings, via phone conversation,
11 and/or via e-mail.

12 Q. Turning on to the next page, which is page 17
13 of Exhibit Pratt 3, which of these paragraphs, 53 to
14 56, were written by you and which were drafted by the
11:42:30 15 attorneys?

16 A. These would have been drafted by the
17 attorneys for the most part after conversation with
11:42:57 18 me.

19 Q. Turning now to the next page, which is page
20 18 of Exhibit Pratt 3, there are paragraphs 57 through
21 59, which of these three paragraphs were drafted by
11:43:14 22 you and which were drafted by the attorneys?

23 A. These would have been drafted by the
24 attorneys after having my input.

25 Q. Flipping on to the next page, which is page

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1 19 of Exhibit Pratt 3, there's one paragraph and one
2 figure, do you see those?

3 A. I do.

11:43:59 4 Q. Who created the figure of page 19?

5 A. That would have been attorneys for Fortress.

6 Q. And who drafted the language in paragraph 60
7 on this page?

8 A. Let me read it. That would have been
11:44:27 9 attorneys for Fortress.

10 Q. Turning now to page 20 of Exhibit Pratt 3,
11 there are paragraphs 61 through 64, which of these
12 paragraphs was drafted by you and which were drafted
11:44:43 13 by the attorneys?

14 A. 61 has a lot of my input in it. It could
15 have been drafted by the attorneys after speaking with
16 me.

17 63 and 64 would have been by the
11:45:22 18 attorneys for Fortress.

19 Q. I'm referring now to the next page, which is
20 page 21 of Exhibit Pratt 3, there's one full
21 paragraph, number 65, did you write that or did the
22 attorneys for Fortress write that?

23 A. Attorneys for Fortress wrote it and I agree
24 with it.

11:45:59 25 Q. I'm sorry, what was the last thing you said,

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1 I couldn't hear it?

2 A. The attorneys for Fortress wrote it, but I
3 agreed with it.

4 Q. Let's turn to page 22 of Exhibit Pratt 3 and
5 there's a figure, do you see that?

6 A. I do.

7 Q. Did you create the figure?

8 A. I did not.

9 Q. Did the attorneys create the figure?

10 A. Presumably, yes.

11:46:29 11 Q. Did you write paragraph 66 of Exhibit Pratt 3
12 or did the attorneys for Fortress write it?

13 A. Attorneys for Fortress wrote that.

14 Q. Turning to the next page, which is page 23 of
15 Exhibit Pratt 3, am I correct that the attorneys for
16 Fortress created the figures there?

11:46:59 17 A. Yes. Presumably now, I think more
18 accurately, these were provided by attorneys for
19 Fortress. I don't know who they -- you know, somebody
20 else created it for them, but it was provided to me by
21 attorneys for Fortress.

22 Q. Thank you for that clarification, Dr. Pratt.

23 Looking at paragraphs 67, would I be
24 correct that you did not draft this paragraph?

25 A. That is correct.

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1 Q. And that this paragraph was provided to you
11:47:30 2 by the attorneys for Fortress?

3 A. Correct.

4 Q. Turning now to page 24 of Exhibit Pratt 3, am
5 I correct that the drawing figure was provided to you
6 by the attorneys for Fortress?

7 A. That's correct.

8 Q. And that the paragraph number 68 was provided
9 to you by the attorneys for Fortress and you did not
10 craft it yourself?

11:47:58 11 A. That's correct.

12 Q. Turning now to page 25 of Exhibit Pratt 3,
13 there are paragraphs 69 through 73, do you see that?

14 A. I do.

15 Q. Am I correct that these paragraphs were
16 provided to you by the lawyers for Fortress and were
17 not crafted by you?

11:48:20 18 A. Let me read through them real quick. That is
19 correct.

20 Q. Turning now to page 26, am I correct that the
21 figure, excuse me, the figures shown on page 26 were
11:48:58 22 provided to you by the attorneys for Fortress?

23 A. Yes.

24 Q. Am I correct that paragraph 74 was provided
25 to you by the attorneys for Fortress?

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11:49:28 1 A. That's correct.

2 Q. Turning now to page 27 of Exhibit Pratt 3, am
3 I correct that paragraphs 75 through 77 were provided
4 to you by the attorneys for Fortress and were not
5 drafted by you?

11:49:48 6 A. Let me read through it real quick.

7 Q. And to be clear, do you consider yourself an
8 expert in fasteners?

11:50:59 9 A. I'm sure there are a lot of fastener types
10 that I'm not familiar with. There's thousands and
11 thousands of types. Not all of them are common in the
12 U.S. even, but I do consider myself an expert in
13 fasteners.

14 Q. What types of fasteners do you think you're
15 an expert in?

16 A. You might ask me what types I'm not an expert
17 in. I mean, the types of fasteners made by Olympic,
11:51:29 18 Monogram, Cherry and Cherry's sister divisions and
19 Hartwell included everything from simple rivets, a
20 solid rivet, for example, that you might pick up at a
21 hardware store, which is one of the simplest types of
22 fasteners, threaded screws, threaded bolts, blind
23 fasteners. Blind fasteners are very sophisticated and
24 can have, you know, several components that work
11:51:58 25 together. So both threaded and nonthreaded permanent

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1 and temporary fasteners and clamping devices, the
2 manufacturer, the metallurgy, the types of metals
3 they're made out, how they process and heat treat, the
4 surface finishes, coatings, lubricants and the
5 equipment on which they're made.

11:52:28 6 Q. Thank you, Dr. Pratt.

7 Now, turning to page 28 of Exhibit Pratt
8 3, there are paragraphs 78 through 80. Which of these
9 were provided to you by the lawyers for Fortress and
10 which of these were drafted by you?

11:53:20 11 A. I had significant input into 78 and 80. I
12 don't require having any input into 79 other than just
11:53:28 13 agreeing with what was written.

14 Q. Well, let's look at paragraph 80. The first
15 sentence says that "In general, fasteners do not
16 create pivotal connections." Is it common in some
17 instances for a fastener to be used in a pivotal
18 connection?

19 A. It's not common, but there are -- there are
20 cases. There are exceptions to everything, like the
21 duck-billed platypus, for example. There are certain
22 types of fasteners that can be used for a pivotal
11:54:00 23 connection, for example, the -- there are shoulder
24 bolts, socket head shoulder bolts that can be used to
25 allow bearing -- ball bearings or different types of

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1 bearings to pivot on a shaft, but generally fasteners,
2 they're either permanent or temporary fasteners and
3 most threaded fasteners are considered temporary,
4 solid rivets and blind rivets are considered permanent
11:54:29 5 fasteners, the difference being some fasteners have to
6 be broken to remove them and others are reusable, but
7 generally they're used to create clamping force to
8 clamp two pieces together, to prevent slippage or
9 they're used to fill the holes, expand and fill the
10 apertures in the structures so once they're installed
11 to prevent slippage. In general, fasteners are there
11:54:59 12 to clamp and prevent slippage of two or more
13 components.

14 Q. Are -- well, I'll withdraw.

15 Turn to page 29 of Exhibit Pratt 3, there
16 are numbered paragraphs 81 and 82. Which of these
11:55:29 17 paragraphs did you craft and which were provided to
18 you by the lawyers for Fortress?

19 A. Let me read it.

20 (Witness reviewing document.)

11:55:53 21 A. 81 and 82 were provided by counsel for
11:56:06 22 Fortress.

23 Q. (By Mr. Gardner) Turn to the next page of
24 Exhibit Pratt 3, you see numbered paragraphs 83 and
25 84. Did you write these paragraphs or were these

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11:56:45 1 provided to you by the lawyers for Fortress?

2 A. I believe they were provided by attorneys for
3 Fortress.

4 Q. Turning now to page 31 of Exhibit Pratt 3,
5 they're paragraphs 85 through 87. Did you write these
6 paragraphs or were they provided to you by the lawyers
7 for Fortress?

11:57:29 8 A. Before I answer that question, can I point
9 out that -- I don't know if you're going to ask me if
10 there was some corrections to this declaration, but
11 there are a couple of errors on this page that I'd
12 like to point out. May I point those out now?

13 Q. On page 30?

14 A. Paragraph 86.

15 Q. On page 31, paragraph 86, yes, sir.

16 A. Yeah. The second sentence should read
17 because it's a little -- there's some ambiguity in the
11:57:59 18 way it's written here. It should read the rotational
19 movement of the picket would not necessarily cause the
20 linear movement of the connector with respect to the
21 rail, period.

22 Q. Well, while we're on that sentence, do you
23 have an opinion about the difference between the word
24 rotation and pivot?

11:58:27 25 A. I guess that depends on the context in which

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1 they're used.

2 Q. Well, what do you understand the word
3 rotation means?

4 A. It depends on the context in which it's used.
5 A bearing rotates on a shaft.

6 Q. For example, the pendulum on a clock which
11:58:57 7 hangs down and goes back and forth, does it pivot or
8 does it rotate?

11:59:29 9 A. I'm not sure it makes any difference.

10 Q. Prior to your deposition today, would you
11 normally have considered that something rotates if it
12 goes all the way around the circle?

13 A. Well, things can rotate less than 360
14 degrees.

15 Q. What if it goes to a back and forth motion
16 that's less than 360 degrees, is that still rotation
11:59:59 17 or is that pivotal motion?

18 A. I think it can still be rotation I think from
19 a mechanical engineering standpoint. I think an
20 engineer would understand that both pivoting and
21 rotation terms could be applied to that movement.

22 Q. Is it your opinion then that the word pivot
23 and rotate mean the same thing?

24 A. It depends on the context in which they're
25 used, I think.

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1 Q. Can you identify any difference between the
2 word -- the meanings of the words pivot and rotate?

12:00:29 3 A. I'd have to think about it.

4 Q. As you sit here today, you're not aware of
5 any difference?

6 A. If I gave -- if I gave it some thought, I
7 might be able to, right now I'm involved in trying to
8 answer your other questions and point out the error on
9 this page.

10 Q. Is there another error on the page?

11 A. There is, footnote 44.

12:00:58 12 Q. And what's wrong with footnote 44?

13 A. The last part of that footnote that says
14 connector strip should read rail.

15 Q. So the words connector strip should be
16 removed and in their place the word rail should be
17 inserted; is that correct?

18 A. That's correct.

12:01:33 19 Q. Let's move on again to page 32 of Exhibit
20 Pratt 3, and looking at paragraphs 88 and 89, which of
21 these paragraphs were crafted by you and which were
22 provided to you by counsel for Fortress?

23 A. Okay. Let me look at it.

24 (Witness reviewing document.)

25 A. They were provided by counsel after we had a

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12:02:20 1 discussion about these cause terms.

2 Q. (By Mr. Gardner) Turning now to page 33 of
3 Exhibit Pratt 3, and noting paragraphs 90 and 91,
4 which of these paragraphs were drafted by you and
5 which were provided to you by counsel for Fortress?

6 A. They were both provided by counsel for
7 Fortress after we had discussion.

12:02:59 8 Q. Turning now to page 34 of Exhibit Pratt 3,
9 paragraphs 92 through 95, which of these paragraphs
10 were drafted by you and which were provided to you by
11 counsel for Fortress?

12 A. 92 was added at my request to address the
12:03:23 13 inertia; 93 and 94 were provided by counsel; 95 was
14 provided by counsel after we had a discussion about
15 the pivotal range.

16 Q. Let's turn to the next page, which is page 35
12:03:53 17 of Exhibit Pratt 3. And which of paragraphs 96 and 97
18 were drafted by you and which were provided to you by
19 counsel for Fortress?

20 A. 96 and 97 were provided by counsel for
21 Fortress, again, after we had discussion about them.

22 Q. Turning now to page 36 of Exhibit Pratt 3,
23 which of paragraphs 98 through 100 were drafted by you
12:04:29 24 and which were provided to you by counsel for
25 Fortress?

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1 A. Okay. Let me take a look.

2 (Witness reviewing document.)

3 A. They were provided by counsel after we had a
12:04:59 4 discussion about these issues.

5 Q. (By Mr. Gardner) Turning now to the next
6 page, which is page 37 of Exhibit Pratt 3. Which of
7 paragraphs 101 and 102 were drafted by you and which
12:05:17 8 were provided to you by counsel for Fortress?

9 A. Provided by counsel for Fortress.

10 Q. Turning to the next page, which is page 38 of
11 Exhibit Pratt 3, first of all, do you recognize those
12 figures as being figures drawn from the -- one of the
12:05:59 13 patents that are being asserted in this case?

14 A. I do.

15 Q. All right. So looking then at paragraphs 103
16 and 104, which of these paragraphs were drafted by you
17 and which were provided to you by counsel for
18 Fortress?

12:06:20 19 A. These were provided by counsel for Fortress.

20 Q. Turning now to page 39 of Exhibit Pratt 3,
21 which have paragraphs 105 and 106 were drafted by you
22 and which were provided to you by counsel for
12:06:42 23 Fortress?

24 A. Counsel for Fortress.

25 Q. Turning now to page 40 of Exhibit Pratt 3,

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1 which of exhibit -- of paragraphs 107 and 108 were
2 drafted by you and which were provided by Fortress's
12:07:19 3 counsel?

12:07:59 4 A. Provided by counsel for Fortress.

5 Q. Turning now to the next page, which is page
6 41 of Exhibit Pratt 3, did you write paragraph 109 or
7 was that provided to you by counsel?

8 A. Provided to me by counsel and I agreed with
9 it.

10 Q. Now, we've gone through these -- the
11 substantive paragraphs of this declaration in some
12:08:28 12 detail. Do you agree with me that the majority of the
13 substantive paragraphs of this declaration were
14 drafted by counsel?

15 A. The majority of it was provided by counsel
16 and to the extent, if I -- if I didn't agree with it,
17 I had them change it. I didn't sign the -- any of
18 this unless it was -- unless I agreed with everything
19 that ended up in the declaration.

20 Q. Well, Dr. Pratt, I'm not trying to suggest
21 that you don't agree with the words in the
22 declaration, other than to the extent that you
12:08:58 23 identified some errors that need to be fixed, so first
24 of all, do you believe everything that's in the
25 declaration is true, correct?

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1 A. I do.

2 Q. So I'm not challenging you on the basis of
3 whether you signed a declaration that you don't agree
4 with, that's not -- that's not my point.

5 I'm trying to understand whether it's
6 true that the majority of the content of this
7 declaration was provided to you and that you then
12:09:29 8 agreed with it and adopted it as your opinion; is that
9 correct?

10 A. I agree.

11 MR. STORM: Objection, form.

12 A. Certainly to -- a lot of it had input from me
13 before it was provided or there were edits to other
14 portions of it.

15 MR. STORM: I'll object to the form and I
16 assume, Mr. Gardner, you can agree with me that if I
17 object after his answer, it's timely so I don't have
18 to trample on his answer every time.

19 MR. GARDNER: That's fine, that's fine,
20 Mr. Storm.

21 MR. STORM: I'll try to object on time if
12:09:58 22 I can, but if he starts to answer, I'll do it
23 afterwards, because it's just preserving it for review
24 later anyway.

25 MR. GARDNER: That's fine, Paul.

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1 Q. (By Mr. Gardner) Now, Dr. Pratt, would you
2 agree with the statement that this declaration or
12:10:23 3 report contains various theses or theories about
4 the -- how the claims should be construed; that is --
5 do you agree with that?

6 A. Well, that's how certain claim terms should
7 be construed and while I -- other claims terms are
8 indefinite.

9 Q. Well, the declaration or report does present
12:10:59 10 some -- your opinions about how the claims should be
11 construed, correct?

12 A. Yes.

13 Q. And my question is, what -- were these
14 already the theories that were presented to you by the
15 counsel for Fortress before you reached any opinions?

16 MR. STORM: I'm going to object to that
12:11:28 17 and instruct him not to answer. The communications
18 back and forth between counsel on the substance is
19 work product and protected by Rule 26. Now you're
20 getting into details that he's -- that you're not
21 allowed to get into so I object and instruct him not
12:11:42 22 to answer on the basis of work product and Rule 26.

23 Q. (By Mr. Gardner) Go back to page 5 of
24 Exhibit Pratt 3.

12:12:30 25 A. Is that the declaration?

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1 Q. It is, Dr. Pratt.

2 You see there the heading, Basis for
3 Opinion and then paragraph 15 it says, "In preparing
4 this declaration, I have considered information from
5 various sources," then it proceeds to list a number of
6 materials. Do you see that?

7 A. I do.

12:13:00 8 Q. Does this paragraph exhaustively state every
9 type of information and every source of information
10 that you considered in reaching your opinions?

11 A. Other than my training, education and
12:13:26 12 experience, as I sit here, I can't identify any other
13 documents that didn't end up on that list.

14 Q. Well, did you talk to any other people
15 besides the lawyers for Fortress and rely on any of
16 that information you may have gotten from other people
12:13:59 17 to reach the conclusions in this declaration?

18 A. I have not.

19 Q. So, for example, did you talk to any
20 designers or engineers in the field of metal fencing
21 in reaching the conclusions in your declaration of
22 Exhibit Pratt 3?

23 A. No.

24 MR. GARDNER: Why don't we take a short
25 break? It's been a little over an hour and the

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12:14:29 1 witness may need a comfort break and maybe some of the
2 people that are otherwise participating might need a
3 comfort break.

4 Dr. Pratt, what time do you normally like
5 to eat lunch?

6 THE VIDEOGRAPHER: Do you want to go
7 ahead and go off record?

8 MR. GARDNER: Go off the record, yes.

9 THE VIDEOGRAPHER: We're off the record
10 at 10:14 a.m.

12:14:49 11 (Recess 10:14-10:33.)

12 THE VIDEOGRAPHER: We are back on the
12:33:50 13 record at 10:33 a.m.

14 Q. (By Mr. Gardner) Dr. Pratt, referring you
15 still to Exhibit Pratt 3, which is your declaration,
16 have you formed any other opinions in connection with
17 this case, whether informal or formal, which are not
18 stated in your report of Exhibit Pratt 3?

19 A. I have not.

20 Q. So in your view, the Exhibit Pratt 3 contains
12:34:27 21 all -- all of your opinions that you've reached so far
22 in this litigation?

23 A. That's correct.

24 Q. Dr. Pratt, do you consider yourself an expert
25 in construing patent claims?

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1 A. I'm sorry, an expert in what?

12:34:57 2 Q. Construing patent claims and claim terms?

3 A. I do not.

4 Q. What is your understanding of how claim terms
5 are supposed to be interpreted?

6 A. It's my understanding they're supposed to be
7 interpreted from the viewpoint of one of ordinary
8 skill in the art at the time the patent was applied
12:35:19 9 for.

10 Q. Is there a difference between the level of
11 ordinary skill in the art and a person of ordinary
12 skill in the art?

13 A. If there is, I'm not sure what it would be.

14 Q. Well, let's look at paragraph 35 on page 12
12:35:53 15 of Exhibit Pratt 3 and you see at the beginning
16 there's a heading that says, "person of ordinary skill
17 in the art," correct?

18 A. Yes.

19 Q. And then there's a -- the next sentence says,
20 "I understand that U.S. patent law interprets patents
21 and prior art from the perspective of a person of
12:36:28 22 ordinary skill in the art," and then it's got the word
23 "(POSITA) at the time of the priority date of a
24 patent." Do you understand what that sentence means?

25 A. Yes.

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1 Q. The last sentence in the paragraph states,
2 whether the priority date is February the 9th, 2009 or
3 February the 9th (sic), 2010 does not change my
4 opinions about the level of ordinary skill in the art
5 or the construction of the claim terms discussed
12:36:56 6 below. What is -- what does that mean?

7 A. I'm not sure I understand your question. I
8 thought it was pretty clear to me.

9 Q. Did you mean to use the words level of
10 ordinary skill in the art in that last sentence or did
11 you mean to use a person of ordinary skill in the art?

12:37:28 12 A. A person of ordinary skill in the art would
13 have a skill level of ordinary skill in the art, so
14 it's pretty much -- I don't know what the difference
15 is. To me, as a simple engineer, it seems like it's
16 referring to the same thing.

17 Q. Well, what is the appropriate way of
18 determining who is a person of ordinary skill in the
19 art?

12:38:04 20 A. Well, there are -- I know there are certain
21 criteria that are used; for example, the level of
22 skill of persons working in that industry at the time
23 of the invention, the skill level and education of the
12:38:22 24 inventors of the patents at suit in this matter, in
25 paragraph 36 I list some others, the prior art

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1 solutions to the problems, the rapidity with which
2 innovations are being made and the sophistication of
3 the technology, educational level of active workers in
4 the relevant fields.

5 Q. Well, let's start with that last one.

6 What do you know about the educational
12:38:56 7 level of people who work in the design and
8 manufacturing of fences?

9 A. I don't.

10 Q. So is it fair to say that you didn't take
11 that last factor into account in determining what a
12 person of ordinary skill in this art would be?

13 A. I used my training and education and
14 experience of over 50 years in the mechanical arts to
12:39:29 15 come up with this definition.

16 Q. But it's not based on any actual knowledge
17 you have of what the level of education is in the
18 field of designing and making metal fences, correct?

19 A. That is correct.

20 Q. Now, at the time that you determined what a
12:39:57 21 person of ordinary skill in the art would be like, did
22 you take into account the prior art solutions to the
23 problem?

24 A. Well, I have a general understanding of the
25 state of the art at the time of the invention, but

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1 I -- from weighting the asserted patents, so I have a
12:40:28 2 kind of a general understanding of what the state of
3 the art was at the time and what improvement was
4 brought with this invention. Am I answering your
5 question?

6 Q. Well, what -- what is your understanding of
7 the general state of the art at the time that the
8 invention was made that's contained in the asserted
9 fence patents?

10 A. Well, for the -- for the type of picket
12:40:59 11 fences that are covered or addressed in the asserted
12 patents, the racking -- raking and angle of the
13 pickets was limited by the size of the clearance holes
14 in the rails. Everything else being equal.

15 So the invention basically results in an
12:41:26 16 increase in raking angle, everything else being equal,
17 without having to change the size of the clearance
18 holes or the pickets.

19 Q. Well, let's talk about the appropriate field
20 of the invention. What is -- what is the correct or
21 pertinent art that you should focus on in determining
12:41:59 22 whether a person has ordinary skill in that art?

23 A. Well, based on my training, education and
24 experience, it involves some knowledge of metallurgy,
25 of forces and loads and the strength of materials,

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12:42:23 1 also kinematic analysis, some mathematical ability.

2 One working in this field to design and
3 build fences in accordance with the asserted patents
4 would need to have -- he'd need to know loads, how
12:42:58 5 much force is going to be needed, interference fits
6 between the rail and the connecting strips, pivot
7 pins, so it requires some mathematical and some
8 limited engineering knowledge and knowledge of
9 materials.

10 Q. Dr. Pratt, my question is not what knowledge
11 or skills a person of ordinary skill in the art might
12 have, that's -- that is not what I'm asking at the
13 moment.

14 What I'm asking you is, what is the
12:43:31 15 pertinent art or field of endeavor which we should be
16 focused on to figure out whether a person has the
17 appropriate skills or not, so what's the field of the
18 art?

19 A. I'm not sure I know the answer to your
20 question. Mechanical devices.

21 Q. Would you agree with me that in the context
22 of the asserted fence patents, the relevant art or
12:43:59 23 pertinent art would be metal fences?

24 A. It could be. It wouldn't have to be metal,
25 limited to metal fences.

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1 Q. What else could it be?

2 A. It could be wooden fences.

3 Q. Is there --

4 A. It can be any mechanical, you know, multiple
5 component mechanical devices in which pivoting and
12:44:22 6 sliding play a role.

7 Q. Do you -- you looked at the asserted fence
8 patents, correct?

9 A. I have.

10 Q. Do you agree with me that all four of the
11 patents disclose and describe metal fences?

12 A. Yes.

13 Q. Do they disclose and describe other objects
14 besides metal fences?

15 A. They don't -- they don't make any suggestion
12:44:58 16 that they're limited to metal fences. I don't think
17 there's anything in the -- any limitations in any of
18 the claims that limit the invention to metal fences.

19 Q. Well, let's back up then. Do you agree that
20 these four asserted fence patents are in the field of
21 fencing?

22 A. I do.

12:45:27 23 Q. Do you think a person of skill in the art
24 should be a person who is skilled in the art of
25 fencing?

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1 A. Not necessarily.

2 Q. And why not?

3 A. Well, I consider myself to be a person of
4 ordinary skill in the art even though I don't -- I'm
5 not skilled in fencing.

6 Q. And why are you skilled in the art if you're
7 not skilled in fencing?

8 A. Well, I can easily analyze and design these
12:45:59 9 types of structures, even though I've not worked in
10 that industry.

11 Q. Well, let's -- let's look at paragraph 37 on
12 page 12 of Exhibit Pratt 3 which is your declaration.

13 A. I'm there.

14 Q. Do you see or do you agree with me that
12:46:25 15 paragraph 37 contains your definition of what a person
16 of ordinary skill in the art would be like?

17 A. It does.

18 Q. Would you agree with me that it contains
19 alternative definitions, one for a person who has a
20 degree in engineering or something similar, and one
21 for a person who does not have a degree in
22 engineering?

23 A. Yes.

24 Q. Well, let's start with the first alternative
25 definition. Is it your testimony today that a person

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12:46:59 1 of ordinary skill in the art would be a person with a
2 bachelor's degree in mechanical engineering, civil
3 engineering or a related field and at least two years
4 of experience working with multicomponent mechanisms?

5 A. That's what it says, yes.

6 Q. How did you come up with the idea that the
7 person would have to have two years of experience,
12:47:28 8 working with multicomponent mechanisms?

9 A. That's based on my training, education and
10 experience, 50 years in industry and private practice.

11 Q. What is a mechanism, Dr. Pratt?

12 A. It's a mechanical device.

13 Q. Is a -- is a hammer a mechanism?

14 A. No.

12:47:59 15 Q. Why not?

16 A. It's not, it's a component.

17 Q. Is it your testimony that a hammer is a
18 component of something else or is it a complete
19 product?

20 A. Well, it's a complete product, but it's not a
21 mechanism.

22 Q. And what makes -- what does the hammer lack
23 that keeps it from being a mechanism?

24 A. Other components that it works with.

25 Q. So a mechanism has more than one component;

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1 is that correct?

12:48:30 2 A. Generally a mechanism is a mechanical device
3 where you have more than one component working in
4 concert with one another.

5 Q. Does a mechanism normally involve some sort
6 of motion between various parts?

7 A. It can, yes. Typically that's the case, yes.

8 Q. And so you would have a mechanism if you have
9 multiple parts working together, one or more of them
10 moving relative to something else to accomplish
12:48:59 11 something; is that correct?

12 A. Yes.

13 Q. Can you think of mechanisms that don't have
14 any moving parts?

15 A. Not offhand.

16 Q. I'd like you to give that some thought for a
17 minute and see if you can think of a mechanism that
12:49:28 18 doesn't have any moving parts.

12:50:33 19 (Pause in proceedings.)

12:53:29 20 Q. (By Mr. Gardner) Dr. Pratt, am I correct
21 that you can't think of any mechanisms that don't
22 involve moving parts?

23 A. I haven't.

24 Q. Now, reading that -- that first definition of
25 what a person of ordinary skill in the art in the

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1 context of the asserted patents would be, did you
2 craft that language in that definition or was that
3 crafted by the lawyers?

4 A. I probably crafted it, but I don't recall for
12:53:59 5 sure.

6 Q. Do you agree with it today?

7 A. Yes.

8 Q. Do you think it's appropriately crafted as
9 you sit here today?

10 A. Yeah. That's not to say that I wouldn't be
11 open to other proposed definitions of what one of
12 ordinary skill in the art is, but that's what I came
13 up with.

14 Q. And why -- why was the phrase multicomponent
12:54:30 15 mechanisms included by you?

16 A. As opposed to just -- excuse me, as opposed
17 to just plain mechanisms, is that your question?

18 Q. As opposed to fences.

19 A. I think it's requiring experience with fences
20 is too limiting.

12:55:00 21 Q. And why is that, sir?

22 A. Well, it's very limiting, it's just limiting.
23 I don't know how to explain it to you. You should
24 understand what limiting means.

25 Q. Isn't it true that the patents are directed

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1 to fences?

2 A. They are, but one of ordinary skill in the
3 art can be somebody who's never seen a wrought iron
4 fence in his life. As long as they have experience
5 with pivoting and sliding connections and the
12:55:29 6 kinematics of mechanisms.

7 Q. Well, let's explore that a little further.
12:56:09 8 So under your -- that first definition of a degreed
9 person who has experience working with multicomponent
10 mechanisms, let's -- let's explore that and see
11 whether the following people would be persons of
12 ordinary skill in the art that could interpret the
12:56:30 13 claim terms for us.

14 So, for example, would a person with a
15 degree in mechanical engineering who has spent more
16 than two years designing automatic transmissions for
17 automobiles be a person of ordinary skill in the art
18 for purposes of the asserted fence patents?

19 A. Yes.

12:57:00 20 Q. Would a person who has a degree in mechanical
21 engineering and has designed residential door locks
22 for more than two years be a person of ordinary skill
23 in the art for the purposes of the asserted fence
24 patents in this case?

25 A. Yes.

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1 Q. Would a person who is a degreed mechanical
12:57:25 2 engineer who has designed photo copiers for two years
3 or more be a person of ordinary skill in the art for
4 the asserted fence patents in this case?

5 A. Yes.

6 Q. Would a person who has a degree in civil
7 engineering who has designed automatic doors for
8 hospitals for more than two years be a person of
12:57:58 9 ordinary skill in the art for the fence -- fences in
10 this case?

11 A. Yes.

12 Q. Would a person who has a degree in mechanical
13 engineering and has worked for more than two years
14 designing small appliances, like toasters or can
15 openers, be a person of ordinary skill in the art
16 regarding the asserted fence patents in this case?

12:58:27 17 A. Yes.

18 Q. And am I correct that you yourself consider
19 you to be a person of ordinary skill in the art in the
20 asserted patents?

21 A. Yes.

22 Q. Despite the fact that you have never designed
23 a fence; is that correct?

24 A. I've never designed a picket fence like this,
25 that's correct.

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1 Q. And you've never worked in the fencing
2 industry, correct?

12:58:57 3 A. That is correct.

4 Q. So let's assume now we've got a person who
5 has a degree in mechanical engineering and has worked
6 in designing and manufacturing metal fencing for more
12:59:28 7 than two years, but the fencing is the type that does
8 not have any moving parts at all, so it's a fixed
9 configuration, maybe the panels are all welded
10 together or all screwed together and nothing can move
11 once it's assembled, so it can't rack at all, but it's
12 still metal fencing, is that person skilled in the art
13 for the purposes of the asserted patents in this case?

12:59:52 14 A. It could be. Just because once it's
15 completely assembled and riveted together or welded
16 together it becomes immobile, there could still be
17 kinematics involved during assembly that would be
18 pertinent.

19 Q. But the person might not have any experience,
20 although they might be familiar with a fixed
21 configuration fence, they wouldn't -- they wouldn't
22 have any working experience with a multicomponent
13:00:30 23 mechanism, would they?

24 A. You're missing the point. It becomes -- only
25 becomes fixed once it's welded and bolted together at

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1 the end of the day, but it's multiple components in
2 the meantime. It doesn't rule out the fact that there
3 could be kinematics involved and dynamics during the
4 assembly or before it's completely frozen into a
5 single component.

6 Q. But it's not -- it's not a mechanism once
7 it's assembled, correct?

13:00:59 8 A. Well, once it's assembled, if there's no
9 moving parts, it may not be a mechanism, but --

10 Q. So in that situation, the engineer would not
11 have experience in designing mechanisms, correct?

12 A. He might not have experience in designing
13 mechanisms. It doesn't necessarily rule him out. I
14 mean, it just broadens the definition of what one of
15 ordinary skill in the art is.

16 Q. But if he's not ruled out, how can your
13:01:30 17 definition be accurate because your definition
18 requires that the person have experience working with
19 multicomponent mechanisms and we've already
20 established that a mechanism involves moving parts?

21 A. Is there a question pending?

22 Q. The question is, is how can a person who has
23 experience in making fixed configuration fences, and
13:01:57 24 no experience in -- in multicomponent mechanisms, but
25 has an engineering degree, why do you consider that

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1 that person would be a person of ordinary skill in the
2 art and yet doesn't meet your definition?

3 A. Well, that person could be a person of
4 ordinary skill in the art.

5 Q. Is your definition flexible or is it rigid?

6 A. It's flexible.

7 Q. So things that are not included in your
13:02:29 8 definition, in your view, might be a person of
9 ordinary skill in the art?

10 A. I think I said -- I said to you earlier that
11 I'm open to other interpretations and they may be
12 entirely acceptable. These are the ones that I came
13 up with. It's not all-inclusive.

14 Q. So let me see if I've got this right. The
13:02:57 15 person who is an engineer who has experience -- well,
16 I'll come back to that, I'll come back to that.

17 Let's look at the second definition that
18 you provide, which -- which deals with the situation
19 where a person doesn't have an engineering degree, but
20 they have some work experience. I believe your
13:03:55 21 definition is that a person would be -- have at least
22 two years -- excuse me, at least four years experience
23 working with multicomponent mechanisms without an
24 advanced degree; is that right?

25 A. That's what I wrote, yes.

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1 Q. Is that -- do you stand by that statement?

2 A. I don't disavow it.

3 Q. So everybody that meets that definition, in
13:04:27 4 your view, would be qualified as a positive, correct?

5 A. Well, could be, could be, not necessarily.
6 We have to be flexible. I've worked with engineers
7 with engineering degrees, even a master's degree and
8 one guy with a Ph.D. who I wouldn't hire in a minute
9 to do the most elementary type work.

10 So at the end of the day, even though
11 this is typically how these descriptions of an
13:04:58 12 ordinary -- a person of ordinary skill in the art are
13 generally laid out, at the end of the day, it depends
14 on how smart the individual is, how -- whether he has
15 a good -- a high level of mechanical aptitude, in
16 addition to experience. So somebody that dropped out
17 of high school in the ninth grade, but yet has a very
18 high mechanical aptitude could probably serve as a
13:05:24 19 person of ordinary skill in the art. It boils down to
20 smarts. Experience and training, education help,
21 but...

22 Q. But let's be clear, let's be clear,
23 Dr. Pratt. Your second definition does not specify
24 that the person has four years of experience working
25 in fencing. It says four years experience working

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1 with multicomponent mechanisms without an advanced
2 degree.

3 A. Yes.

13:06:00 4 Q. Is that -- is it your testimony that anybody
5 that meets that definition is going to be a positive
6 for the purposes of this matter?

7 A. That's not meant to say that 100 percent of
8 people that meet that definition are going to qualify
9 as a person of ordinary skill in the art.

10 Q. So this statement's not really 100 percent
11 true, is it?

12 A. None of my -- none of these statement are 100
13:06:28 13 percent true. They're guidelines to what I believe a
14 person of ordinary skill in the art is, in general
15 terms, somebody with four years -- four years of
16 experience and a high school degree -- high school
17 degree only, and four years of experience working with
18 rebuilding transmissions or building houses or doing
19 things that require some knowledge in kinematics and
20 strength of materials, may or may not qualify as a
13:06:58 21 person of ordinary skill in the art. Somebody with a
22 high school degree with four years of working at a
23 Tastee-Freez, flipping hamburgers, may not.

24 Q. All right. Well, let's run with that. So
25 we've got a high school graduate who's worked as an

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1 auto mechanic for five years, and is that person a
2 person of ordinary skill in the art for the purposes
3 of the asserted fence panels -- patents in this case?

13:07:28 4 A. Could be, depends on his mechanical aptitude.

5 Q. Well, I'm assuming that he's a good mechanic,
6 he's been doing it for five years.

7 A. Well, don't assume.

8 Q. Well, I mean, what -- how -- how would the
9 court exclude him on whether he's a good mechanic or
10 not? Your definition doesn't say that he has to be a
11 good mechanic, it just says he has to have experience
12 working with multicomponent mechanisms.

13 A. Uh-huh. Yes.

14 Q. So is there anything in your definition that
15 would exclude my five-year mechanic with a high school
13:07:59 16 degree, high school diploma from testifying as an
17 expert in this case?

18 A. I'm not a lawyer so you have to -- you have
19 to answer that question yourself. As far as I know, I
20 don't know if it excludes him or not. I wrote what I
21 wrote --

22 Q. As far as you know, that person would meet
23 your definition of a person of ordinary skill in the
13:08:28 24 art, correct?

25 A. Of course.

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1 Q. And similarly, an installer of residential TV
2 antennas, satellite antennas, with five years of
3 experience and a high school diploma might also be a
4 person of ordinary skill in the art related to the
5 asserted fence patents in this case, correct?

6 A. It's possible, yes.

13:08:58 7 Q. And a heating and air conditioning technician
8 with five years of experience and a high school
9 diploma might be a person of ordinary skill in the art
10 in connection with the asserted fence patents in this
11 case, correct?

12 A. That's possible, yes.

13 Q. And what about an aerospace worker, the guy
14 that works in the factory assembling the components
13:09:25 15 into subassemblies and subassemblies into assemblies
16 making airplanes, he's got five years of experience
17 working for Lockheed on the line and a high school
18 diploma, is that person a person of ordinary skill in
19 the art for the purposes of the asserted fence patents
20 in this case?

21 A. According to that definition, yes.

22 Q. So if you're the expert for Fortress with
13:09:55 23 your background and we were to -- and Barrette were to
24 present the airplane assembly guy that's got five
25 years of experience putting airplanes together, why

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1 should either one of you be accepted by the court as
2 an expert in -- in fences?

13:10:29 3 A. Well, I would hope that my education,
4 training, and experience more than qualifies me to
5 opine on sliding terms and pivoting terms and causes
6 terms and bosses and nubs.

7 Q. Now, one of the things that puzzles me about
13:10:58 8 this report, this declaration, Exhibit Pratt 3, is
9 that there -- there might be a couple different ways
10 of interpreting your report. And so when you are
11 opining about how the terms should be construed, are
12 you telling us that some theoretical person of
13:11:28 13 ordinary skill in the art would interpret the words
14 that way, or are you telling us that you, yourself,
15 are a person of ordinary skill in the art and that you
16 personally interpret the words that way?

17 A. Well, I'm putting myself into the shoes of a
18 person of ordinary skill in the art per my definition
13:11:56 19 on paragraph 37. What a person of ordinary skill in
20 the art would think that term means, when we're
21 talking about the terms for which I'm offering a
22 construction.

23 Q. So when we -- so when we read your opinion,
24 whenever you're talking about what the -- how words or
25 phrases should be interpreted, these are not some

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1 other person's -- how somebody else would interpret
2 it, but it's how you interpret the words and you
13:12:30 3 consider yourself to be someone who has ordinary skill
4 in the art, correct?

5 A. No. Listen to what I said. I said my
6 opinions in my declaration are based on what I believe
7 a person of ordinary skill in the art at the time of
8 the invention would understand.

9 Q. So first of all, do -- is a person of
13:12:57 10 ordinary skill in the art an actual person or a
11 theoretical person?

12 A. It's a theoretical person.

13 Q. And when you are giving your opinion in the
14 report or declaration of Exhibit Pratt 3, you are
15 stating then that it is your opinion that this
16 theoretical person would interpret the words and
17 phrases of the patent claims in certain manners based
13:13:27 18 on your belief that you are a person of ordinary skill
19 in the art; is that correct?

20 A. Yes.

21 Q. But you haven't actually spoken to anybody
22 who is skilled in this art, correct?

23 A. Well, I'm skilled in the art.

24 Q. But you haven't spoken to anybody that has
25 experience in the field of fences, correct?

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1 A. That's correct.

13:13:57 2 Q. So, isn't it correct that your opinion about
3 how someone in this actual field might interpret these
4 words and phrases is really just informed speculation?

5 MR. STORM: Object to the form.

6 A. Well, my opinion expressed in my declarations
7 are solidly based on my training, education, and
13:14:24 8 experience.

13:14:34 9 Q. (By Mr. Gardner) Let's -- let's step away
10 from the theoretical person of ordinary skill in the
13:15:28 11 art for a moment. Let's talk about actual people who
12 work in the industry, work in the field. Do you know
13 what the -- what people who work in this industry have
14 in the way of technical education?

15 A. I assume you're talking about people that
16 design these types of mechanisms or the people who
17 erect them?

18 Q. I'm talking about the people who design and
13:15:58 19 develop fences, what's your understanding of the
20 education level of those designers and developers?

21 A. I don't know any of these individuals so I
22 don't have an understanding about what their
23 background or educational level is.

24 Q. Do you have any understanding about the
25 amount of experience that the typical designer or

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1 developer would have in the field of fences?

13:16:27 2 A. Like I just said, I don't know anybody so I
3 don't have any feel for any of that.

4 Q. Is it fair to say that you probably have more
5 education than the typical developer or designer of
6 fences?

13:17:00 7 A. I -- I wouldn't know. I would assume so, but
8 I don't know.

9 Q. It is true that the typical designer or
10 developer of fences has more actual experience with
11 fences than you do because you don't have any; is that
12 correct?

13 A. I don't have any experience designing fences,
14 so what you said is true with respect to designing or
13:17:23 15 using the fences.

16 MR. GARDNER: Why don't we take a short
17 break while I figure out if I need to move on to
18 another subject.

19 THE VIDEOGRAPHER: We're off the record
20 at 11:18 a.m.

13:18:22 21 (Recess 11:18-11:29.)

22 THE VIDEOGRAPHER: We are back on the
23 record at 11:29 a.m.

13:30:19 24 Q. (By Mr. Gardner) Dr. Pratt, does your
13:30:25 25 opinion of Exhibit Pratt 3 contain an opinion that you

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1 can't tell whether the claims are infringed or not
2 because there's no frame of reference for the -- the
3 rotational, pivotal movement?

13:30:56 4 A. Are you talking about the angles?

5 Q. Yes, Doctor.

6 A. Are you looking at a particular part of my
7 declaration?

8 Q. Well, if I could direct you towards the end,
13:31:21 9 I believe maybe at paragraph 102 on page 37 and
10 thereafter.

11 A. These paragraphs reflect my opinions. Is
12 there a particular one that you have a question about?

13 Q. Well, the question is, do these -- do the
13:31:58 14 angular measurements that are called for in the claims
15 require a vertical frame of reference, for example?

16 A. I believe they do. For example, if we -- if
13:32:24 17 the claim calls for pivotal range of 40 degrees, it --
18 it's one thing if it means plus or minus 20 degrees
19 from the vertical, it's something entirely different
20 if it means zero degrees in one direction and 40
21 degrees in the other. I don't know if I'm addressing
22 your question or not, but I think it's important to
23 have a frame of reference, either vertical or offset.

24 Q. Well, let me -- let me publish to you
13:33:01 25 another -- another document. I'm going to -- for the

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1 moment I'm going to -- we'll keep your declaration
2 open. We're going to add another exhibit so...

3 A. Yeah, for what it's worth, the share screen
4 has been completely blank. I have to look at a hard
5 copy of my declaration to answer your questions.

13:33:28 6 Q. Well, do you have a copy of the '965 patent?

7 A. I do.

8 MR. GARDNER: We'll call this Exhibit
9 Pratt 4.

13:33:59 10 (Exhibit No. 4 marked.)

11 A. That one actually -- well, that doesn't quite
12 come up. First and second page come up, but none of
13 the other pages, so -- so I can look at my hard copy.

14 Q. (By Mr. Gardner) Referring to claim 1, which
15 is towards the back of the document.

16 A. Yes.

13:34:27 17 Q. Do you see where it says that the -- the
18 pivotal, at the very end of the claim, that the
19 "pivotal range of the plurality of pickets relative to
20 the plurality of rails is at least about 20 degrees in
21 each direction?"

22 A. I see that.

13:34:57 23 Q. Does that language in that part of the claim
24 require some frame of reference, other than those
25 words to know whether someone has pivoted the pickets

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1 relative to the rails at least about 20 degrees in
2 each direction?

3 A. I think it does need a frame of reference in
4 order for one to know what the bounds of the claim
13:35:23 5 are, or at least that limitation. For example, if I
6 was providing a competitive fence and Barrette decided
7 to sue me for patent infringement by demonstrating
8 that by offsetting the rail it only -- it went 40
9 degrees in one direction, but zero degrees in the
10 other or 30 degrees in one direction but only 10 in
11 the other because of the offset rail, they could
12 assert infringement.

13 So knowing what the frame of reference
13:35:59 14 is, if it's vertical, then it's perfectly exclusively
15 clear that it's, when the picket is vertical plus or
16 minus 20 degrees as opposed to plus zero, minus 40 or
13:36:15 17 minus zero, plus 40.

18 Q. So am I correct that what you're talking
13:36:59 19 about is a starting point?

13:37:04 20 A. Yes.

21 Q. Just to -- just a few quick questions about
22 the patent. The title of this patent involves the
23 word fence, correct?

24 A. Yes.

25 Q. And the abstract of the patent refers to

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1 fencing, correct?

2 A. Yes.

13:37:59 3 Q. And the summary of the invention refers to
4 fencing, correct?

5 A. Yes.

6 Q. And the -- the detailed description describes
7 fencing, correct?

8 A. Yes.

13:38:26 9 Q. And the claims are directed to fencing,
10 correct?

11 A. Yes.

12 (Exhibit No. 5 marked.)

13 Q. (By Mr. Gardner) I'll show you now what's
13:38:58 14 been marked as Exhibit Pratt 5, which is the '332
15 patent.

16 A. I have it.

17 Q. And similarly, do you agree that this patent
18 is directed to fencing like the previous exhibit?

19 A. Yes.

20 (Exhibit No. 6 marked.)

13:39:43 21 Q. (By Mr. Gardner) Once again I'm publishing
22 to you Exhibit Pratt 6, which is the '164 patent and
23 similar to the previous two patents we just talked
24 about, do you agree that this patent is also directed
13:39:58 25 to fencing?

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1 A. I agree.

2 (Exhibit No. 7 marked.)

3 Q. (By Mr. Gardner) I'm showing you now an
4 exhibit that's been marked Pratt 7, which is the 9 --
13:40:26 5 excuse me, the '905 patent, do you also agree that
6 this asserted patent is directed to fencing?

7 A. Yes.

8 MR. GARDNER: It's about 2:30, why don't
9 we take a food break and a drink break and then we'll
10 come back on another topic?

11 THE VIDEOGRAPHER: We're off the record
13:40:54 12 at 11:40 a.m.

13:46:48 13 (Recess 11:40-12:13.)

14 THE VIDEOGRAPHER: We are back on the
14:13:55 15 record at 12:13 p.m.

16 Q. (By Mr. Gardner) Dr. Pratt, earlier in the
17 deposition we -- we talked about your prior work and
18 whether your testimony -- your expert testimony had
19 ever been excluded. I'm going to show you again
14:14:21 20 Exhibit 3 -- no, excuse me, Exhibit 2 and direct your
21 attention to the Kyocera versus Hitachi Koki case. Do
22 you remember that case?

23 A. Yes.

24 Q. Isn't it true that at some point in the
25 proceedings in that case your opinion regarding

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1 infringement under the Doctrine of Equivalence was
2 excluded?

3 A. I think that's right, yes.

4 Q. Are there any other cases in which your
14:14:58 5 opinion -- your expert testimony has been excluded by
6 a court?

7 A. Not that I'm aware of.

14:15:33 8 (Exhibit No. 8 marked.)

9 A. Yeah, the reason that testimony in the
10 Kyocera case was excluded is because I wasn't one of
11 ordinary skill in the art under the court's definition
12 of that term. So under -- if you're not under one of
13 ordinary skill in the art, apparently you can't offer
14 opinions under DOE.

15 Q. (By Mr. Gardner) What was the technology in
14:16:00 16 that case?

17 A. It was battery-powered nailers.

18 Q. And what was your experience with -- the
19 closest to that?

20 A. Installation tools, electric and pneumatic
21 for fasteners.

22 Q. And that wasn't close enough to be skilled in
23 the art?

24 A. Well, I thought it was, but the court was
14:16:27 25 convinced otherwise or the administrative law judge

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1 was convinced otherwise in that case.

2 Q. I'm showing you now an exhibit, Exhibit Pratt
3 8, which is a published decision from the Court of
4 Appeals for the federal circuit in that case that was
5 published at the end of January of this year. Are you
6 familiar with that order?

14:16:54 7 A. I am not.

8 Q. Have you had any discussions with the lawyers
9 in that case about whether your testimony has been
10 excluded for all purposes, not just for Doctrine of
11 Equivalence because you didn't have actual work
12 experience in the field of powered nailers?

13 A. The only one I'm aware of is -- was opinions
14:17:26 14 related to the DOE.

15 Q. Well, I will represent to you, Dr. Pratt,
16 that the federal circuit now has ruled that in order
17 for you to have testified with respect to any of the
18 expert opinions that you had reached in that case, you
19 had to have work experience in the relevant art, in
20 the pertinent art which was deemed to be powered
21 nailers, and so all of your testimony has been
22 excluded in that case.

14:17:59 23 A. Oh, okay. Well, I wasn't aware of that.

24 MR. GARDNER: That's all the questions I
14:18:29 25 have, Dr. Pratt.

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1 MR. STORM: I have no questions either
2 and therefore we're done.

3 THE REPORTER: Are we going to read and
4 sign, Paul?

5 MR. STORM: Yes, of course.

6 THE REPORTER: I'll send you the original
7 transcript.

8 THE VIDEOGRAPHER: We are off the record
9 at 12:18 p.m.

10 (Deposition concluded at 12:18 p.m.)
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CHANGES AND SIGNATURE

WITNESS NAME: JOHN D. PRATT

MARCH 10, 2022

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I, JOHN D. PRATT, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

JOHN D. PRATT

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared JOHN D. PRATT known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2022.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My commission expires: _____

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 I, Kim M. Dickman, Certified Shorthand
4 Reporter, in and for the State of Texas, certify that
5 the foregoing deposition of JOHN D. PRATT was reported
6 stenographically by me at the time and place
7 indicated, said witness having been placed under oath
8 by me; that review was requested pursuant to Federal
9 Rules of Civil Procedure 30(e)(1); and that the
10 deposition is a true record of the testimony given by
11 the witness.

12 I further certify that I am neither counsel
13 for nor related to any party in this cause and am not
14 financially interested in its outcome.

15 Given under my hand on this the 15th of
16 March, 2022.

17 



18 Kim M. Dickman, Certified
19 Shorthand Reporter No. 2181
in and for the State of Texas
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My commission expires 4-30-23

24 TIME USED BY THE PARTIES:

25 Mr. Arthur Gardner: 2 hours, 10 minutes

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