

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 K/S HIMPP
6 Petitioner,

7 v.

8 BRAGI GmbH,
9 Patent Owner.

10
11 Case IPR2023-001150
U. S. Patent No. 9,843,853

12 Case IPR2023-01204
13 U. S. Patent No. 10,117,014

14 Case IPR2023-01205
15 U. S. Patent No. 10,397,688

16
17 REMOTE DEPOSITION UNDER ORAL EXAMINATION OF
18 DARRIN YOUNG

19 DATE: July 15, 2024

20
21
22
23
24 REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT of the deposition of the
DARRIN YOUNG, called for Oral Examination in the
above-captioned matter, said deposition being taken by
and before CHARLENE FRIEDMAN, a Notary Public and
Certified Court Reporter, a Registered Professional
Reporter, and a Certified Realtime Reporter, via video
teleconference, by Zoom, on July 15, 2024, commencing at
approximately 11:00 in the morning.

1 A P P E A R A N C E S:

2

3 MCKOOL SMITH
4 300 Crescent Court
5 Suite 1500
6 Dallas, Texas 75201
7 (214) 978-4000
8 BY: BRADLEY JARRETT, ESQ.
9 Attorneys for Petitioner

10

11 WILMER HALE
12 250 Greenwich Street
13 45th Floor
14 New York, New York 10007
15 (212) 230-8800
16 BY: TRISHAN ESRAM, ESQ.
17 BRIAN LAMBSON, ESQ.
18 Attorneys for Patent Owner

19

20 * * * * *

21

22

23

24

25

26

27

28

29

30

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS NAME	PAGE
DARRIN YOUNG	
By Mr. Esram	7, 91
By Mr. Jarrett	76

* * * * *

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE
EXHIBIT 1	Declaration in Support of Patent Owner's Motion to Amend in the '853 IPR	14
EXHIBIT 2	Declaration in Support of Patent Owner's Motion to Amend in the '014 IPR	18
EXHIBIT 3	Declaration in Support of Patent Owner's Motion to Amend in the '688 IPR	19
EXHIBIT 4	Photographs	27
EXHIBIT 5	Patent application	51

* * * * *

1

- - -

2

Deposition Support Index

3

- - -

4

5

Direction to witness not to answer

6

Page

Line

7

None

8

9

Request for production of documents

10

Page

Line

11

None

12

13

Questions marked

14

Page

Line

15

None

16

17

18

19

20

21

22

23

24

25

1 CERTIFIED SHORTHAND REPORTER: My
2 name is Charlene Friedman, a Certified
3 Shorthand Reporter and Notary Public of the
4 State of New Jersey. This deposition is
5 being held via video teleconference
6 equipment.

7 The witness and reporter are not in
8 the same room. The witness will be sworn in
9 remotely, pursuant to agreement of all
10 parties. The parties stipulate that the
11 testimony is being given as if the witness
12 was sworn in person.

13
14
15
16
17
18
19
20
21
22
23
24
25

1 D A R R I N Y O U N G ,

2 called as a witness, having been first duly
3 sworn according to law, testifies as follows:

4

5 EXAMINATION BY MR. ESRAM:

6 Q Good morning, Dr. Young.

7 A Good morning.

8 Q Please state your full name, for
9 the record.

10 A First name Darrin, D-A-R-R-I-N.

11 Last name, Young, Y-O-U-N-G.

12 Q Where are you currently located for
13 today's deposition?

14 A I am in Salt Lake City, Utah.

15 Q Is this where you live?

16 A Yeah, I'm in my home.

17 Q Is anyone else with you?

18 A My wife and my daughter are in the
19 house, but they are not in this room.

20 Q If ever someone comes in the room,
21 would you please let us know?

22 A Of course, yes.

23 Q Are you using any notes today?

24 A No, I am not using any notes.

25 Q Do you have any papers, whether

1 hard copy or electronic with you today?

2 A I have -- I have the hard copies of
3 the documents that the counsel send me, but
4 these are clean copies, nothing written on
5 it.

6 Q Do they have any highlights on
7 them?

8 A No, no highlights. It's all clean.

9 Q Would you be able to identify the
10 documents you have in front of you?

11 A Okay.

12 Q Please.

13 A Yeah, I'm going to -- for the '853
14 patent, I have my Declaration.

15 I have Patent Owner's Motion to
16 Amend.

17 I have the '853 patent.

18 I have the Brown reference.

19 I have the Hain reference.

20 I have the Shaffer reference.

21 I have the Steinbrecher's
22 reference.

23 I have the Sorensen reference.

24 I have my CV.

25 I have the original application to

1 the patent.

2 I have the Petitioner's Petition.

3 That's what I have for the -- for
4 the '853 patent.

5 And I can tell you what I have for
6 the other two. They are similar materials.
7 I think they are the same, except the Brown
8 reference is not included in the other two
9 patents. Other than that, I believe all the
10 documents are identical.

11 Q For the original application that
12 you mentioned, what's the exhibit number for
13 it?

14 A Let me give it to you.

15 The document that I'm looking at,
16 at the lower right-hand corner, it has
17 capital letter HIMPP with a space, then
18 followed by 1008.

19 Q Thank you.

20 And for the '014 IPR, do you have
21 your declaration for it?

22 A Yes. For the '014 IPR, I have the
23 Declaration with me.

24 Q And you have the Petitioner's
25 Motion to Amend -- I'm sorry, strike that.

1 Do you have Patent Owner's Motion
2 to Amend in the '014 IPR?

3 A Yes, I do.

4 Q Moving on to the '668 (sic) IPR, do
5 you have your Declaration and Patent Owner's
6 Motion to Amend for that IPR?

7 A For the '688 IPR, I have my
8 Declaration with me and I have Patent Motion
9 Owner's to Amend with me.

10 Q Thank you.
11 I meant '688, not '668.

12 A Yes, it's '688.

13 For the '688 IPR, I have my
14 Declaration with me and the -- the Patent
15 Owner's Motion to Amend with me.

16 Q Dr. Young, have you been deposed
17 before?

18 A Yes, I have been deposed before.

19 Q Will you agree not to have any
20 communications with anyone while we are on
21 the record during this deposition?

22 A Yes, I agree.

23 Q How many times have you been
24 deposed before?

25 A I've been deposed about 20 times.

1 Q Was the depositions for IPR cases
2 like the ones at issue today?

3 A I worked on the, you know, cases
4 related to IPRs, and I also worked on cases
5 related to District Court in ITC.

6 So for all of those cases, you
7 know, if I produce a report and I will be
8 kind of deposed after that.

9 Q You've probably heard this before,
10 but let me just reiterate that the court
11 reporter is going to be writing down
12 everything we say. So please -- please give
13 verbal answers and avoid talking over me, and
14 I will try to do the same, okay?

15 A Sure. Thank you.

16 Q Do you understand that you took an
17 oath today to tell the truth?

18 A I understand that.

19 Q Is there any reason why you will
20 not be able to answer my questions truthfully
21 today?

22 A There's no such reason.

23 Q You understand that we are here
24 today to discuss three IPRs, the first one is
25 IPR 2023-01150 regarding U.S. Patent No.

1 9,843,853?

2 A Correct, that's my understanding.

3 Q The second IPR at issue is IPR
4 number 2023-01204 regarding U.S. Patent No.
5 10,117,014?

6 A That's correct.

7 Q And the third IPR is IPR 2023-01205
8 regarding U.S. Patent No. 10,397,688?

9 A That's correct.

10 Q If I refer to the U.S. Patent No.
11 9,843,853 as the '853 patent, you will know
12 what I'm referring to, correct?

13 A Correct.

14 Q If I refer to the U.S. Patent No.
15 10,117,014 as the '014 patent, you will
16 understand what I'm referring to, correct?

17 A That's correct.

18 Q If I refer to the U.S. Patent No.
19 10,397688 as the '688 patent, you will
20 understand what I'm referring to, correct?

21 A That's correct.

22 Q The '014 patent is a continuation
23 of the '853 patent, correct?

24 A I don't recall, but I believe what
25 you said.

1 You know, I don't recall which was
2 the continuation of which.

3 Q You know what a continuation
4 application is, correct?

5 A That's correct. My understanding
6 is all the three patents share the same
7 original application.

8 Q So you understand that the three
9 patents, the '853, '014, and '668 patents
10 share the same specification, correct?

11 A You mean the '688 patent, right?

12 Q Yes, the '688 patent.

13 A They share the same specifications.
14 That's my understanding.

15 Q So let me reiterate that question
16 just to be clear.

17 The '853, the '014, and the '688
18 patent share the same specification, correct?

19 A That is correct.

20 Q When was the last time you read the
21 specification for the three patents, the
22 '853, the '014 and '688 patents?

23 A I just want to make sure that I --
24 I heard your question right.

25 You asked me when was the last time

1 I write the specifications?

2 Q You read. You read.

3 A I'm sorry, yeah.

4 I read the specification last week.

5 That was my last time when I prepared for the
6 deposition.

7 Q Okay. I am going to drop an
8 exhibit into the chat. You may have it in
9 front of you.

10 You can look at the PDF that I'm
11 about to drop or you can use what's in front
12 of you.

13 MR. ESRAM: And that will be
14 Exhibit No. 1 to this deposition.

15 (Above-mentioned document marked
16 for Identification.)

17 Q Dr. Young, please let me know when
18 you have Exhibit 1 and have it opened.

19 A He asked me to save it. So what
20 I'll do is, I'll probably download it, save
21 on my computer first and then I'll open it.
22 It's just the option that prompted me.

23 Q That is okay.

24 A Okay. Thank you.

25 (Brief pause in proceedings.)

1 A I think I've got it open.

2 Q Okay. The document in front of you
3 is your Declaration in support of BRAGI's,
4 that is the Patent Owner's Motion to Amend in
5 the '853 IPR.

6 Is that correct?

7 A That's correct. That's what the
8 first page, the front page states.

9 Q And that is Exhibit 2001 in the
10 '853 IPR, correct?

11 A Yes, that has Exhibit No. 2001.

12 Q Staying on the cover page of
13 Exhibit 2001 in the '853 IPR, it says at the
14 bottom, and I'm quoting, quote-unquote, "In
15 Support of Patent Owner's Response," end
16 quote.

17 Do you see that?

18 A I see that.

19 Q Should "In Support of Patent
20 Owner's Response" have been "In Support of
21 Patent Owner's Motion to Amend"?

22 A Yeah, I would think in the
23 amendment, the motion to amend their
24 response, I guess my report, my Declaration
25 was -- was generated to support patent

1 owner's response as was their amendment.

2 Q You are aware that patent owner did
3 not file a response to Petitioner's Petition
4 in the '853 IPR, right?

5 A I just want to make sure that I --
6 I heard the first part right.

7 You said, You are not aware of
8 what?

9 Q I said -- and I repeat the
10 question -- You are aware that patent owner,
11 meaning BRAGI, did not file a response to
12 Petitioner's Petition in the '853 IPR,
13 correct?

14 A I do not know whether they filed a
15 response or not. What I -- the document that
16 I received for me to review include their --
17 I think it was their preliminary response,
18 and in the Petitioner's Petition, their
19 Motion to Amend, and a number of prior
20 reference, you know, those reference cited by
21 the Petitioner along with the -- the original
22 application for that -- for the three
23 patents.

24 That's what I received to review.

25 Q Did you review a response by patent

1 owner?

2 A I reviewed something labeled as --
3 if I remember correctly, it's the Preliminary
4 Patent Owner's Response.

5 Q And your Declaration in the '853
6 IPR is in support of Patent Owner's Motion to
7 Amend, correct?

8 A I think that's correct.

9 Q So on the front page of your '853
10 Declaration, which is Exhibit 2001 in the
11 '853 IPR, it should say, "In Support of
12 Patent Owner's Motion to Amend," correct?

13 A I think that's correct, but I --
14 just to be fair, I do not know the
15 procedures, what is considered their -- their
16 response.

17 Q Okay.

18 A I mean, to me, their Motion to
19 Amend may be considered as a response.

20 Q How long did you spend preparing
21 your Declaration in support of Patent Owner's
22 Motion to Amend in the '853 IPR?

23 A I just want to make sure I heard
24 your question right.

25 Did you ask me how long did I --

1 Q Spend.

2 A -- spend?

3 You mean like how many number of
4 hours?

5 Q Yes.

6 A Somewhere between 30 to 40 hours.

7 Q Okay. I'm going to drop another
8 exhibit in the chat?

9 MR. ESRAM: And that will be
10 Exhibit No. 2 to this deposition.

11 (Above-mentioned document marked
12 for Identification.)

13 Q Please let me know when you have
14 Exhibit No. 2 saved and open, Dr. Young.

15 A Okay. Thank you.

16 Let me do that.

17 (Brief pause in proceedings.)

18 A I have that document open.

19 Q The document in front of you is
20 your Declaration in Support of Patent Owner's
21 Motion to Amend in the '014 IPR, correct?

22 A Yes, it is my Declaration to
23 Support Patent Owner's --Patent Owner's
24 Response, but I -- you know, I guess, based
25 on what we just discussed, that means to

1 support the Patent Owner's Motion to Amend
2 for the '014 patent.

3 Q How long did you spend preparing
4 your Declaration in the '014 IPR?

5 A Maybe somewhere between 20 to 30
6 hours.

7 Q The 20 to 30 hours you spent, was
8 it in addition to the time you spent
9 preparing the Declaration in the '853 IPR or
10 is it overlapping?

11 A Well, they're not overlapping.
12 This is something that I worked on after I
13 think the first report.

14 Q Let me drop Exhibit No. 3 into the
15 chat.

16 (Above-mentioned document marked
17 for Identification.)

18 Q Once again, please let me know when
19 you have Exhibit No. 3 saved and open.

20 A I have that exhibit -- Exhibit 3
21 open in front of me.

22 Q The document in front of you is
23 your Declaration in Support of Patent Owner's
24 Motion to Amend in the '688 IPR, correct?

25 A That's correct, yeah. It's in

1 Support of Patent Owner's Response based on
2 what we discussed. You know, I think that
3 means in Support of Patent Owner's Motion to
4 Amend for the '688 patent.

5 Q And this is Exhibit 2001 in the
6 '688 IPR, correct?

7 A That's the Exhibit 2001. That's
8 what it says on the page.

9 Q How long did you spend preparing
10 your Declaration in Support of Patent Owner's
11 Motion to Amend in the '688 IPR?

12 A Maybe around 20 hours.

13 Q For each of your three
14 Declarations, in the '853, '014 and '688
15 IPRs, did you write every word?

16 A I'm not sure.

17 What do you mean by, you know, did
18 I or did you write every word?

19 Q Did you type every word in your
20 Declaration in each of the three IPRs?

21 A I worked with the counsel closely
22 to generate my Declaration, you know. I -- I
23 initially received a draft in a whole line of
24 that report, but, you know, I worked very
25 closely with the counsel.

1 I provide pretty much additions,
2 edits throughout the document. It may not be
3 on every page, but it was very extensive
4 edits done by me, and sometimes I worked with
5 the counsel on the phone. I tell them that
6 this is my opinion and they may type up a
7 sentence.

8 Q You consider everything in your
9 three Declarations in the '853, '014 and '688
10 IPRs to be accurate, correct?

11 A I mean, these are the opinions that
12 I set forth in those reports.

13 Q And by "report," you mean
14 Declaration?

15 A Yes, those are the opinions that I
16 set forth in my Declarations.

17 Q Okay. You are currently an
18 associate professor at the University of
19 Utah, correct?

20 A That's correct.

21 Q You're familiar with wireless power
22 transmission systems, correct?

23 A That's correct.

24 Q You are familiar with wireless
25 earpieces, correct?

1 A Correct.

2 Q When was the first time you became
3 aware of BRAGI?

4 A You mean their patents or the name
5 of the companies?

6 Q The name of the company and the
7 patent owner.

8 A I do not remember exactly when was
9 my first time I came across the name, but I
10 heard about the name before.

11 Q And by having heard of the name
12 before, you mean before you were engaged to
13 be an expert in the IPR proceedings involving
14 the '853, '014, '688 patents, correct?

15 A I think that's correct.

16 Q How long before?

17 A I do not recall exactly how long
18 before, but I do recall I came across the
19 name before I start work on this case.

20 Q In what context did you hear the
21 name BRAGI?

22 Let me repeat the question.

23 In what context did you hear the
24 name BRAGI for the first time?

25 A I do not recall the specific

1 context in which I heard about the name.

2 Q When is the first time you became
3 aware of the '853 patent?

4 A That was when I start work on the
5 case.

6 Q When was the first time you became
7 aware of the '014 patent?

8 A Also after I start work on the
9 case.

10 Q When was the first time you became
11 aware of the '688 patent?

12 A Also after I start work on the
13 case.

14 Q Do you know Eric Christian Hirsch?

15 A I do not know him.

16 Q Do you know Peter Vincent Boesen?

17 A I do not know him.

18 Q Circling back to your earlier
19 answer, is it fair to say you only heard
20 about BRAGI in passing?

21 A You mean like I casually heard
22 about it, is that what you mean?

23 Q Yes.

24 A I think that's fair to say.

25 Q Is it fair to say that you weren't

1 familiar with BRAGI's products?

2 A You know, I did not offer such
3 opinion in my report, right?

4 As I said, I heard about the name
5 of the company, you know, in your, I guess,
6 characterization, I heard in passing. I
7 think that's fair to say.

8 Q Do you recall using or looking at
9 BRAGI's products?

10 A Not -- not that I -- not that I
11 remember of.

12 Q Is it fair to say that you weren't
13 familiar with BRAGI's patents?

14 A That's fair to say.

15 Q Is it fair to say that you weren't
16 familiar with BRAGI's employees?

17 A That's fair to say.

18 I do not know anyone, off my head,
19 working for the firm -- I mean, working for
20 the company.

21 Q Do you know what phrase "in-ear
22 wireless earpiece" means?

23 A I assume you're asking me the
24 meaning of wireless in-ear earpiece, what
25 that means under the context of the patent,

1 right?

2 Q Let me rephrase it.

3 Do you know what the phrase, quote,
4 in-ear wireless earpiece, end quote, means?

5 A I understand the meaning under the
6 context of the patent.

7 Q What is the meaning under the
8 context of the patent?

9 A You know, when I look at the
10 patent, its specification in light of a
11 person's ordinary skill in the art --

12 (Reporter clarification.)

13 A Can you repeat the question again?
14 Can you say it again?

15 I'm sorry. I didn't hear what
16 Charlene was asking.

17 (Whereupon, the record was read
18 back by the reporter.)

19 A I look at the patent in a patent
20 specification through the lens of an ordinary
21 skill in the arts. My understanding is that
22 wireless in-ear earpiece or maybe it's the
23 phrase of in-ear wireless earpiece -- I'm
24 sorry, I may not remember the words exactly,
25 but -- so let's say that's in-ear wireless

1 earpiece, it means it is a -- it is a
2 wireless earpiece that is inserted in the
3 ear, in the ear canal.

4 Q I will now drop -- strike that,
5 please.

6 What do you mean by "inserted in
7 the ear canal"?

8 A Oh, it is a -- like earpiece,
9 right? You insert into the ear so the path,
10 right? I think in ordinary skill in the art,
11 an average person will understand that's the
12 ear canal, right, you know, from the -- from
13 the entry of the ear, maybe further into
14 the -- the ear canal.

15 That's my understanding.

16 Q Okay. So an in-ear wireless
17 earpiece must extend beyond the entry of the
18 ear, correct?

19 A I don't recall I made that opinion
20 in my report, right?

21 What I said was, you know, a person
22 of ordinary skill in the art looking at the
23 patent, looking at the specification, will
24 understand that in-ear wireless earpiece, it
25 is a wireless earpiece that -- that an

1 individual wear, right, by inserting that
2 earpiece into the ear canal.

3 Q I will now drop Exhibit 4 into the
4 chat.

5 (Above-mentioned document marked
6 for Identification.)

7 Q When you have Exhibit 4 saved and
8 opened, please let me know.

9 A I will do that.

10 I have that document open.

11 Q Exhibit 4 shows two pictures,
12 correct?

13 A That's correct.

14 Q You agree that the first picture at
15 the top of the page of Exhibit 4 shows
16 wireless earpieces, correct?

17 A Okay. This is my first time to see
18 these pictures, but to be fair, I -- I can
19 tell you, just by looking at the pictures,
20 especially the second picture, right, that
21 shows the side view of that individual's face
22 wearing that piece.

23 Q So based on what you're seeing in
24 these two pictures in Exhibit 4, would you
25 agree that these are earpieces that are

1 wireless?

2 A I did not make such an opinion in
3 my report, and I would need to either look
4 more about exactly what is going on with --
5 with these devices, but just to be fair,
6 right, I'm looking at this picture,
7 especially the side view of the individual
8 wearing that device.

9 And I think it is something that
10 you wear as -- as a -- as an earpiece, let's
11 say, right? It's inserted, partially
12 inserted inside the ear. That's all I can
13 tell you just by looking at these pictures.

14 Q So the earpieces in Exhibit 4 are
15 wireless, correct?

16 A I think for me -- I mean, it's
17 correct for me to -- I think it's correct for
18 me to say that, at least by looking at these
19 pictures, I do not see any wire attached to
20 it.

21 Q If the earpieces in Exhibit 4 don't
22 have wires attached to them, they are
23 wireless, isn't it?

24 A I think just to be technical
25 correct, right, you know, for me to make that

1 position, I would need to look at that
2 product more carefully.

3 You know, I think it's unfair for
4 me to make that conclusion just by looking at
5 these two photos, first time seeing them,
6 with no additional technical documents
7 supporting or describing what's going on
8 here.

9 Q A moment ago, you said that you
10 agree at least that the earpieces in Exhibit
11 4 are -- and I quote, partially inserted
12 inside the ear, unquote.

13 Do you recall saying that?

14 A Yes, almost like -- I mean, I do
15 not recall exactly what words I said, but
16 let's say that this is -- this is what I
17 said. Yeah, I recall this is what I said.

18 Q You'll agree that the portion of
19 each earpiece of Exhibit 4 -- strike that.

20 You'll agree that the bottom
21 picture in Exhibit 4 shows how the earpieces,
22 at least one of the earpieces, is worn by a
23 user, correct?

24 A Yeah, I'm looking at figure 2,
25 right? As I said, I don't remember the exact

1 wording, right, but I recall I said something
2 like, if you look at the second picture,
3 which shows a side view of an individual and
4 that person is wearing something, as you show
5 in the -- in the top picture, right.

6 Q Can you say from these pictures
7 whether the earpiece extends into the ear
8 canal of the user?

9 A I mean, just by looking at this, I
10 think it is fair to say that, right, at least
11 when I look at this, this device, you know
12 may be made by Bose, right, it's worn by an
13 individual.

14 There is something that goes inside
15 the ear as a way to hold. That's what I can
16 tell you, by looking at the second picture,
17 which is a side view of that person, right,
18 you know, wearing that device.

19 Q If you're looking at the second
20 picture at the bottom of Exhibit 4, the one
21 showing the user wearing the earpiece, you'll
22 agree that a portion of that earpiece is
23 outside of a user's ear when worn by the
24 user, correct?

25 A I mean, that's what the picture

1 shows, right.

2 Q Do you agree that a portion of the
3 earpiece is outside of a user's ear?

4 A Just give me a second.

5 Somehow the exhibit disappeared,
6 but I should have it on my computer. Let me
7 just go find it.

8 (Brief pause in proceedings.)

9 A I think it's fair to say that you
10 got something attached as part of that -- as
11 part of that device that is outside the ear.
12 That's what the picture shows.

13 Q So the wireless earpieces shown in
14 Exhibit 4, are they in-ear wireless
15 earpieces?

16 A I did not offer that position in my
17 report, right, and I just want to let you
18 know that this is my first time seeing these
19 pictures.

20 You know, my opinions of the
21 meaning of in-ear wireless earpiece is set
22 forth in my report, and this is the first
23 time I'm seeing this picture, right?

24 And I just want to let you know
25 that without seeing more information about

1 what's going on here, just to be technically
2 correct, I don't want to jump into -- to --
3 to offer you a wrong opinion.

4 Q What more information would you
5 need to be able to tell if the earpieces in
6 Exhibit 4 are in-ear wireless earpieces?

7 MR. JARRETT: Objection, calls for
8 speculation.

9 Q You can still answer, Dr. Young.

10 A Yes. I'm just trying to think
11 about how to give you the correct answer,
12 right?

13 But I think, just to let you know,
14 when I look at these two pictures, my first
15 gut feeling is that they do not convey enough
16 information, okay?

17 Now, if you ask me what additional
18 information do I need, I think I probably
19 need to know more at least, right, of the
20 operation of the device and perhaps how these
21 components are designed.

22 And -- and if you ask me what else
23 I needed, but I think to be fair, for this
24 type of proceeding, right, you are talking
25 about in-ear wireless earpiece with respect

1 to the claim, right?

2 And I would need to have -- I need
3 to look at the claim language carefully and I
4 need to compare what that piece does and how
5 that piece is made, perhaps there are some
6 other limitations of that piece in comparison
7 to the claims limitation, that I can give you
8 a better answer.

9 Q I'm not asking you about the whole
10 claim. I'm just asking you whether this is
11 an example of an in-ear wireless earpiece.

12 A I'm not ready to provide you with a
13 definite answer because as I said, I need to
14 know more about what's going on with this
15 piece, like how it is built, what -- what's
16 inside that -- that unit, right?

17 And -- but circling back to the
18 claim, I think for this type of proceeding,
19 you know, what we discuss here is with
20 respect to the specification, with respect to
21 the claim.

22 Q Are you saying that an in-ear
23 wireless earpiece requires a specific
24 manufacturing process?

25 A I -- I don't recall that's what I

1 said.

2 Q Well, does it -- or does a
3 in-ear -- sorry, strike that.

4 Does an in-ear wireless earpiece
5 require a specific circuitry?

6 A If you -- if you're okay, I would
7 like to look at, for example, the amended
8 claim just to make sure, you know, I'm on the
9 same page with respect to the claims, at
10 least amended claims that is kind of listed
11 as a part of my Declaration.

12 Q Please go ahead.

13 (Witness reviewing.)

14 A All right. If you look at Claim
15 22, which is a proposed substitute for Claim
16 1, right, it reads, "As a method for managing
17 in-ear wireless earpieces comprising powering
18 circuitry of the in-ear wireless earpieces
19 utilizing a high power mode in response to
20 detecting a magnetic field. It's not applied
21 to one or more of the in-ear wireless
22 earpieces wherein the powering circuitry is
23 housed within the in-ear wireless earpieces,
24 and altering the powers sent to the circuitry
25 of the in-ear wireless earpieces to a low

1 power mode in response to detecting a
2 magnetic field is applied to one or more of
3 the in-ear wireless earpieces."

4 So I'm just looking at what the
5 claim states, right? It does require, for
6 example, powering circuitry is housed within
7 the in-ear wireless earpieces, and I also
8 look at the specification, right? The
9 specification of the patent or the original
10 application does show some pictures, right,
11 like during a -- a block diagram, right,
12 indicating, you know, certain circuitries
13 that are required as a part of the powering
14 circuitry, and positioned, you know, inside
15 or -- or is housed within the in-ear wireless
16 earpieces.

17 So to answer your earlier question,
18 to circle back, right, this is -- this is
19 what's required. You know, you asked me
20 about the circuitry and all that stuff. I
21 think this is -- the claims in the
22 specification gave you a certain
23 understanding certain circuitries is needed,
24 the powering circuitry is needed, right, and
25 it's housed within the in-ear wireless

1 earpieces.

2 Q Dr. Young, I'm not asking you your
3 opinion on the other limitations.

4 The only piece I'm focusing on is
5 the in-ear, the wireless earpiece recitation
6 in the claim.

7 A You don't just look at the single
8 element alone in the claim, right?

9 You look at all these limitations
10 collectively to understand what the -- what
11 the scope is for the claim.

12 Q So it is your opinion, then, for an
13 in-ear wireless earpiece to be an in-ear
14 wireless earpiece all the other limitations
15 of the Claim 22 need to be met, correct?

16 A I think the Claim 22, right, is a
17 claim that sets certain limitation -- certain
18 limitation for an in-ear wireless earpiece.

19 Q Looking back at Exhibit 4, is the
20 device shown in Exhibit 4 in-ear?

21 Let me start with, is the device
22 shown in Exhibit 4 an earpiece?

23 A I mean, to be fair, what I can tell
24 you is that this is something -- just looking
25 at a picture, right, especially in Figure 2,

1 the second picture, looking at the side view
2 of the face of an individual, it looks like,
3 you know, it's a device that a person wears,
4 you know, wears in the ear, right?

5 And -- but I also want to be
6 technically correct, right, as I said.

7 I do need to see more information
8 about what's going on here in order to
9 provide you with a correct answer.

10 If you just showed me a picture,
11 two or three pictures that I never seen
12 before and then you asked me to offer an
13 opinion, and I think for this type of
14 proceeding, right, I need to be more careful
15 about what -- what it is or what it is not.

16 Q I represent to you that the
17 earpieces in Exhibit 4 are wireless. It
18 connects to a small phone, for example,
19 wireless, okay?

20 A Right.

21 When did you present to me this is
22 a piece that connects to the phone? You
23 never said that.

24 Q I now --

25 A Okay.

1 Q -- represent to you.

2 A Okay, sorry. Sorry about that.

3 Yeah, I heard what you said. Now you are --
4 you are telling me.

5 Q Okay. Let's start over.

6 I now represent to you that the
7 earpieces in Exhibit 4 are wireless earpieces
8 in that it can communicate wirelessly to a
9 device like a small phone, okay?

10 Do you agree that the wireless
11 earpieces shown in Exhibit 4 are in-ear
12 wireless earpieces?

13 A I mean, based on what you present
14 to me now, right, if this thing, it
15 communicates to a small phone, you know --
16 you know, as you said, it has no wire
17 connected to the small phone and it
18 wirelessly communicates to a small phone, but
19 just to be clear, I have not seen documents
20 like that.

21 I take what you said as a -- as a
22 technically correct representation of what's
23 going on with that piece, right, you know,
24 how it communicates with a cell phone. Then
25 to be technically correct, I will say it does

1 have the wireless capability, right, because
2 it can wirelessly communicate to the phone
3 based on what you -- what you just told me.

4 And if you ask me whether it meets
5 the limitation of in-ear wireless earpiece, I
6 have to tell you, to be technically correct,
7 I need to see more about what is going on
8 with that device, right; what type of
9 components it is used, how these components
10 are positioned, how these -- how the features
11 of this device meet the limitation of in-ear
12 wireless earpieces as claimed by the claim.

13 Q How does a positioning of the
14 components within the earpiece relate to
15 whether it is a -- an in-ear wireless
16 earpiece?

17 A You have to look at a specification
18 of patent, right? And it gives you a -- it
19 provides -- it provides certain
20 understanding, right, of what that means when
21 a person of ordinary skill in the art looking
22 at the claims in light of the specification.

23 And I think there are multiple
24 places in the patent or the original
25 application of the patent provides to teach

1 you all embodiments, per se, right, for the
2 meaning of in-ear wireless earpieces.

3 Q And does the general positioning of
4 components within the earpiece have to match
5 one of the embodiments disclosed in the
6 specification to be a wireless in-ear
7 earpiece?

8 A My understanding, if you do read
9 the specification limitation back to the
10 claim, right, you look at the claimed
11 limitation in light of the specification.

12 And that the claimed limitation
13 clearly tells you that, right, in Claim 22,
14 which is the -- which is the proposed
15 substitute for the original Claim 1, it says
16 that, "Wherein the powering circuitry, is
17 housed within the in-ear wireless earpieces."
18 And I think this is one of the limitation
19 that requires, right, for that -- for that
20 claim.

21 Q And looking at the earpieces in
22 Exhibit 4, the powering circuitry for these
23 earpieces, would they not be in the
24 earpieces?

25 A Just like what I said to you

1 earlier, right? I need to see more about
2 what's going on with those pieces. By just
3 showing me these pictures, I -- I don't want
4 to jump into conclusion what it does and what
5 it does not do because it is -- you can show
6 it to anyone, right?

7 So this is a very high level, you
8 know, nice picture of the product, right, a
9 nice picture showing a side view of an
10 individual wearing that piece, but in terms
11 of the technical specification, in terms of
12 exactly what's going on inside that piece, I
13 won't be able to tell you just by looking at
14 it.

15 Q So your position is depending on
16 how the internal components are laid out, an
17 earpiece can be an in-ear wireless earpiece
18 or it might not be, correct?

19 A I think my position is set forth in
20 my report.

21 Q And what is that position?

22 A My position, I think, is -- it's
23 somewhere in my report. I talk about -- I
24 talk about the patent, right? I talk about
25 in-ear wireless earpieces.

1 Q You looked at your Declaration
2 before this deposition, correct?

3 A Yes, I did.

4 Q Do you recall where in your
5 deposition you talked about the in-ear
6 wireless earpieces?

7 A I just want to make sure I -- I
8 hear you correctly.

9 You said where in my deposition or
10 where in my Declaration?

11 Q I'm sorry.

12 A That's okay. I just want to make
13 sure I got it right.

14 Q Let me ask it again.

15 Where in your Declaration did you
16 give your position about what an in-ear
17 wireless earpiece is?

18 A If you don't mind, I can go through
19 my Declaration and try to find it.

20 Q Please do.

21 (Witness reviewing.)

22 A I'm done looking through my
23 Declaration, but just letting you know that I
24 found something, for example, on page 30 of
25 my Declaration, right? There is a table, you

1 know, listing, you know, claim limitation,
2 okay, and a proposed substitute of claim to
3 the claims, and also, listing support from
4 original U.S. application for the '853
5 patent.

6 And the first limit -- the first
7 claim limitation, you know, that's shown on
8 page 30 talks about in-ear wireless
9 earpieces, right? And there are, you know,
10 writings in the descriptions, including
11 pictures, right, Figure 1 and Figure 2 as
12 well as Figure 4 from the original
13 application that provides, you know, the
14 features, right, and understanding of what
15 that -- what it means by in-ear wireless
16 earpieces.

17 Q Looking at Figure 1, Figure 2 and
18 Figure 4, along with the disclosure you have
19 from Column 4 through 9 -- Column 4, lines 19
20 through 20 of the specification, what is,
21 then, your position of what an in-ear
22 wireless earpiece is?

23 A Well, the figures as well as the
24 description of the specification indicates
25 that, right, it is a -- it is a wireless

1 earpieces that you insert into the ear, and I
2 guess to be consistent with what I said,
3 right, into the ear canal, you know.

4 I guess ear canal, to me -- you
5 know, I'm not a medical doctor, right, so I'm
6 using that term maybe in a claim language for
7 ordinary meaning. It depends on how far you
8 go into the ear, right, but it's something
9 that I think a person of ordinary skill in
10 the art will understand it's something that
11 you insert into the ear, just like the shape
12 shown in Figure 1, right, and -- as well as
13 in Figure 4.

14 But also, Figure 4 provides
15 additional kind of a support, right, in terms
16 of what type of components, for example,
17 batteries, memories, transceivers, magnets,
18 interface, large engines.

19 I mean, these are some examples of
20 the circuitry that will be -- that will be
21 needed, right, to build that, you know,
22 in-ear wireless earpiece, and that's my
23 position. That's my understanding of the
24 meaning of that term, looking at the
25 application, right, which is also perhaps,

1 you know, part of the specification of the
2 patent to come out my understanding of the
3 meaning of this term.

4 Q So based on what you just
5 described, looking back at Exhibit 4, can you
6 tell now whether the earpieces -- whether
7 Exhibit 4 shows an earpiece -- I'm sorry, let
8 me reword this.

9 Based on what you just told us, can
10 you tell now whether Exhibit 4 shows an
11 in-ear wireless earpiece?

12 A Just to be fair, like what I told
13 you earlier, I'm -- like what I told you
14 earlier, just looking at these pictures first
15 time without knowing more about what is going
16 on with those pieces, I'm not ready to give
17 you a opinion or position whether it is a
18 in-ear wireless earpieces or not. I need
19 to -- and I really need to be given more
20 information to look at these things more
21 carefully.

22 Q Do you need to know how the
23 batteries, memories, et cetera, are laid out
24 within the earpiece?

25 A I have not thought about that, but

1 I just -- as I said, I need to -- I need to
2 be provided, right, with -- with more
3 documentation so that I can look at this
4 whole -- the subject matter, right?

5 For example, I need the pieces in
6 its -- in its more holistic view, because
7 it's just too -- too superficial, right, for
8 you to show me these two pictures and ask me
9 to come up with my opinion what it is or what
10 it is not.

11 Q Okay.

12 MR. ESRAM: Let's take a break and
13 go off the record, please.

14 (Brief recess taken.)

15 Q Okay. Dr. Young, before the break,
16 we were looking at Exhibit 4, correct?

17 A That's correct.

18 Q Looking at Exhibit 4, you agree
19 that it's an earpiece. You also agree that
20 it's in-ear because it fits into the user's
21 ear canal, and you assumed that it's a
22 wireless earpiece.

23 So would you agree that it's an
24 in-ear wireless earpiece given the assumption
25 that it is wireless?

1 A I think we talked about that
2 before. You know, I don't remember the exact
3 wording. You know, as I said based upon what
4 you told me, this piece can communicate with
5 a -- a small phone.

6 So my understanding is it carries
7 some wireless capability, right, but if you
8 ask me whether it is an in-ear wireless
9 earpieces somehow, I think right before the
10 break, what I said was, if you just show me
11 Exhibit 4, which contains two pictures, and
12 it's too superficial for me to look at these
13 two pictures without knowing more about --
14 more about the device to give you an opinion
15 of whether it is or it is not an in-ear
16 wireless earpiece.

17 Q You agree the earpiece in Exhibit 4
18 has portions that are in the ear and portions
19 that are outside of the ear, correct?

20 A And just to be fair, when I look at
21 the piece, it looks like there's something
22 else outside the ear and something inside the
23 ear. I mean, just by looking at Figure 2,
24 right, you know, as I said to you before,
25 it's the side view of that individual's face,

1 right, showing that device is worn by that
2 individual.

3 Q If I tell you which components of
4 the earpiece are inside the ear and which
5 components are outside of the ear, then would
6 you be able to determine whether Exhibit 4 is
7 an in-ear wireless earpiece?

8 A I mean, just to be fair, I probably
9 need to see more about -- about that device
10 in terms of its components, its capabilities
11 rather than just hearing what you telling me
12 piece by piece what it is or what it's not in
13 trying to derive a conclusion on the fly, and
14 I think -- it's just -- I wouldn't do things
15 like that because I can make wrong opinions
16 without seeing the entire documents.

17 Q Is the issue whether the earpiece
18 in Exhibit 4 is wireless or in-ear or
19 something else?

20 I'm just trying to understand the
21 issue.

22 A I think the issue is when you --
23 when you show me something like that, right,
24 two pictures at a very high level, maybe
25 slash a superficial level, I -- I'm just not

1 ready to provide you with an answer that I
2 will believe it is technically correct.

3 Q I can give you more information,
4 but I'm asking you what additional
5 information should be.

6 A I'm not ready to tell you what
7 exactly should be, right, given -- just like
8 when I worked with counsel, they provided me
9 the information that I reviewed. And based
10 upon the information I was provided, I
11 reviewed and I provided my technical
12 analysis.

13 Q If I were to show you the spec
14 sheet, would you be able to look at it and
15 tell us if it is a wireless -- an in-ear
16 wireless earpiece?

17 A I would just narrow it down to a
18 spec sheet, right?

19 Again, I don't know what to tell
20 you in terms of what you exactly need to
21 provide to me on the fly, but if it's
22 something that you provided to counsel and
23 counsel provided it to me, if I had more
24 time, I could look at it more carefully and
25 offer an opinion. But if you show me

1 something on the fly, I -- you know, I just
2 feel uncomfortable to provide you with an
3 answer that I feel comfortable about.

4 Q Let's go back to your Declaration
5 in the '853 IPR, which is Exhibit 1 to this
6 deposition, and look at paragraph 51 on page
7 20.

8 Let me know when you're there.

9 A I am at page 20.

10 Q Do you see paragraph 51?

11 A Yes.

12 Can I take a look at it?

13 Q Please.

14 A Thank you.

15 (Witness reviewing.)

16 Yeah, I was looking at that
17 paragraph, 51.

18 Q In paragraph 51 of your Declaration
19 in the '853 IPR, you provided a high level
20 description of Hain, correct?

21 A That's correct.

22 Q In paragraph 51, you write that
23 "Hain discloses three modes, normal,
24 telephoning, and off state," correct?

25 A Yes. That's what the document

1 says.

2 Q In paragraph 51, you also write
3 that, open quote, "When the magnetic field is
4 detected by both hearing aids, the hearing
5 aids enter an off state," end quote, correct?

6 A That's correct.

7 Q You don't dispute that Hain's off
8 state is a low power mode, correct?

9 A I think that's correct. I don't
10 recall I dispute that Hain's off state is a
11 low power mode.

12 Q I'm about to drop Exhibit 5 into
13 the chat.

14 (Above-mentioned document marked
15 for Identification.)

16 Q Please save it and open it, and let
17 me know when you have it open.

18 A Yeah, it's -- I'll let you know as
19 soon as I get that. Let me find it first.
20 Once I open it, I'll let you know.

21 (Brief pause in proceedings.)

22 A I've got the exhibit open.

23 Q The document in front of you is
24 Exhibit 1004 in each of the three IPRs at
25 issue today.

1 A Yes. Looking at the right corner
2 of the first page, I see capital letter
3 HIMPP-1004.

4 Q And this is Exhibit 1004 indeed.

5 And I represent to you that this is
6 the -- the translation of Hain.

7 You have read Hain before, correct,
8 Dr. Young?

9 A Yes, I have read Hain.

10 Q Let's take a look at Hain's Figure
11 2, which is on the last page of the PDF in
12 Exhibit 5.

13 A I am at Figure 2 of Hain.

14 Q The flowchart -- strike that.

15 Hain's Figure 2 shows a flowchart,
16 correct?

17 A I think that's correct, yes. It's
18 a flowchart.

19 Q The flowchart in Hain's Figure 2
20 illustrates how Hain's hearing aids enter
21 different modes of operation, correct?

22 A I think that's what the flowchart
23 shows.

24 Q You testified a moment ago that
25 when the magnetic field is detected by both

1 hearing aids, the hearing aids enter an off
2 state, correct?

3 A I think that's correct.

4 Q Now, when both hearing aids in Hain
5 do not detect a magnetic field, both hearing
6 aids enter the normal mode, correct?

7 A I do not recall if I offered that
8 position or not, but what I can tell you is
9 that when I look at that flowchart, right,
10 it -- it tells you that if you look at the
11 top box, right, on the upper left corner, it
12 asks whether there's a magnetic field or not,
13 right?

14 The flowchart tells you if there's
15 no magnetic field, it entered normal mode.
16 If there is a magnetic field, it goes down to
17 the next level, right? It talks about
18 magnetic field in the other hearing aid or
19 not.

20 So it's kind of jumping to -- the
21 question asks you, what happened to the other
22 hearing aid, right? If the other hearing aid
23 detects a magnetic field, so you look at the
24 flowchart, right? It has two yes--yes arrow,
25 right? So that tells you that when you enter

1 the hearing aid off mode, along that
2 flowchart, you have yes and yes, right? That
3 tells you that both hearing aid device detect
4 a magnetic field.

5 That's -- that's with a logic flow,
6 at least I'm looking at this, you know,
7 through ordinary skill in the art or just
8 through a typical engineer, right? You're
9 looking at the flowchart. It tells you that
10 it requires two hearing aids, both detecting
11 magnetic field in order to go to the hearing
12 aid off mode.

13 That's my understanding.

14 Q My question was: When both hearing
15 aids do not detect a magnetic field, they
16 operate in the normal mode, correct?

17 A Just to be technically correct,
18 right. You look at the box and it tells you
19 that magnetic field or not, right?

20 The first box, if there's no
21 magnetic field, it goes into the normal mode,
22 but it doesn't -- it doesn't say whether it's
23 two or not, right?

24 So I'm looking at this. To me, it
25 asks, right, whether you have a magnetic

1 field or not. If there's no magnetic field,
2 it asks what happened to the other hearing
3 aid, right? That's the second box below.

4 So if the other hearing aid does
5 not detect magnetic field and the hearing aid
6 that you referred to detects the magnetic
7 field, then the logic flow indicates that the
8 system is designed at least for the hearing
9 aid knowing that that person is talking on
10 the telephone, right?

11 Q Dr. Young, that is not my question.

12 So I'm asking you, when no magnetic
13 field is detected, I'm not going down that
14 arrow that says yes when you have a question
15 of magnetic field.

16 When a magnetic field is not
17 detected, you're looking at the arrow saying
18 no, correct?

19 A That's correct.

20 Q Okay. When that hearing aid
21 doesn't detect any magnetic field, it
22 operates in normal mode, correct?

23 A I think that's correct.

24 Q If they use a second hearing aid,
25 that hearing aid doesn't detect a magnetic

1 field, that second hearing aid operates in
2 the normal mode, correct?

3 A I would think this flowchart
4 indicates that. That's your interpretation
5 here.

6 Q Do you agree that at least two
7 hearing aids are at issue in flowchart number
8 2, in Figure 2?

9 MR. JARRETT: Objection, vague.

10 A I think, just to be fair, I look at
11 this flowchart in light of specification, and
12 I think a person of ordinary skill in the art
13 will understand that.

14 With respect to the flowchart with
15 respect to the technology, you know, it
16 involves two hearing aids, right? The reason
17 why I say two hearing aids is I don't just
18 look at the top box like you're pointing, but
19 I can't tell what it does by looking at the
20 one box, right? I cannot go through the
21 entire logic of flow, and as a technical
22 person, maybe an engineer will have a better
23 understanding of what it does.

24 So what the -- the next box says
25 the magnetic field in other hearing aid or

1 not, it tells me that this whole thing to you
2 was two hearing aids, right? When one
3 detects no magnetic field going into the
4 normal mode and if it detects the magnetic
5 field, then it talks about -- then it starts
6 asking question, what happened to the other,
7 okay?

8 So to answer your question, when a
9 magnetic -- when a hearing aid detects the --
10 detects no magnetic fields, right, it's the
11 arrow that comes to the right-hand side,
12 right, it enters the normal mode. That's
13 what I can tell you.

14 Q Well, in the flowchart of Hain, it
15 doesn't tell you if it's that hearing number
16 1 or hearing aid number 2. There is no
17 distinction between the two hearing aids at
18 issue, correct?

19 A I don't remember how exactly they
20 refer to hearing 1 and hearing 2. They just
21 may referring to a hearing aid or hearing
22 aids.

23 I don't recall whether they labeled
24 it 1 or 2, but to be technically correct,
25 right, whether it's 1 or 2, it's just one of

1 them.

2 Q So as an expert, there are two
3 hearing aids at issue, you need to read
4 Figure 2 in Hain, you start in the very top
5 left box, and that one hearing aid detects no
6 magnetic field, that one hearing aid operates
7 in normal mode, correct?

8 A That's correct, when I viewed the
9 flowchart through the lens of an ordinary
10 skill in the art.

11 Q And if there is a second hearing
12 aid and that second hearing aid doesn't
13 detect a magnetic field, that second hearing
14 aid operates in normal mode as well, correct?

15 A That's not what the flowchart
16 teaches.

17 Q What other mode would that second
18 hearing aid operate in?

19 A I cannot provide the opinion. I'm
20 just looking at the flowchart, right?

21 I -- I'm not -- I'm not guessing
22 what would happen to the second one. I'm
23 just looking at the flowchart. It tells you
24 that if magnetic field is not detected by a
25 hearing aid, that hearing aid goes to the

1 normal mode. That's exactly what the two
2 boxes on the top shows, right?

3 If that hearing aid detects a
4 magnetic field, it does not go to normal mode
5 and asks what happened to the other hearing
6 aid.

7 Does that hearing aid detect a
8 magnetic field or not. If no, then it goes
9 to -- it goes to telephone mode. If yes, it
10 tells you that both hearing aids detect the
11 magnetic field, then they go into the hearing
12 aid off mode.

13 And I know you were asking me don't
14 go down that path, but it's just hard to look
15 at the flowchart and focus on one box without
16 looking at all of the other logical options,
17 right, indicated in the drawing.

18 Q Let's take a look at paragraph 11
19 of Hain.

20 Take a moment and read paragraph
21 11, please, Dr. Young, and let me know when
22 you finish.

23 A Okay. I'll read it and I'll let
24 you know when I'm done.

25 (Witness reviewing.)

1 A I'm done with reading paragraph 11.

2 Q In paragraph 11, it gives an
3 example of a storage box for the hearing
4 aids, correct?

5 A That's correct.

6 Q The storage box contains a
7 permanent magnet, correct?

8 A That's what that passage says.

9 Q You understand that the permanent
10 magnet has a magnetic field, correct?

11 A That's correct.

12 Q In paragraph 11, Hain explains that
13 the hearing aid is switched on after it has
14 been removed from the storage box, correct?

15 A Yeah, I think that's what the
16 passage says, right.

17 If you look at the end of the --
18 well, if we look at the end of page 2, I --
19 it says, which also enables the relevant
20 hearing aid to be switched on again
21 automatically after it has been removed from
22 the storage box. I think that -- that's what
23 it says.

24 Q When Hain's hearing aid is removed
25 from the storage box, the hearing aid does

1 not detect the magnetic field of the
2 magnetic -- of the permanent magnet in the
3 storage box, correct?

4 A I think that's correct.

5 Q When the hearing aid does not
6 detect the magnetic field of a permanent
7 magnet in the storage box, it is switched on,
8 correct?

9 A Yes. For that individual hearing
10 aid, I think that's correct. That's my
11 understanding reading that passage.

12 Q And when the hearing aid is
13 switched on, it means that the hearing aid is
14 powered on, correct?

15 A Just to be precise, I think they
16 are always on, right? You know, they -- I
17 have to look at -- I have to look at -- you
18 know, earlier you asked me whether the
19 hearing aid off, right, it's a low powered
20 mode or not.

21 And you asked me whether I dispute
22 that or not. I said I do not dispute your
23 position that hearing off -- when hearing aid
24 is off, it is in a low power mode. And -- so
25 again, it's -- I don't remember exactly what

1 Hain said, but if I'm not mistaken -- if I'm
2 not mistaken, I believe Hain talks about
3 hearing -- when hearing aid is off, it's not
4 completely off. There may be some still
5 small amount of residual power being
6 dissipated.

7 So I just want to use that as a --
8 as a technical basis for the discussion.
9 When you say switch on, I just want to make
10 sure that we're not talking about switch on
11 in terms of completely off to completely on
12 because that device, hearing aid, when it's
13 in the off state, it is still on, but it's
14 not dissipating that much power.

15 That's why I did not dispute your
16 position in your petition that when hearing
17 aid is off, it is in the low power mode.
18 Maybe it's not in the zero power mode, you
19 know. I just want to make sure we're on the
20 same page, you know, in terms of on and off,
21 you know.

22 Q I understand.

23 Still looking at paragraph 11 in
24 Hain, there are two hearing aids in the
25 storage box, and they're both removed from

1 the storage box, both hearing aids stop
2 detecting the magnetic field of a permanent
3 magnetic in the storage box, correct?

4 A If you look at the paragraph 11,
5 the paragraph 11 did not talk about both
6 hearing aids, right?

7 They talk about a hearing aid.
8 It's a single hearing aid device. That's my
9 understanding.

10 Q Does it matter which hearing aid is
11 removed from the storage box?

12 A It probably does not matter which
13 one is removed from the storage box, but I
14 just want to let you know my read on that
15 passage, right? It says, they focus on
16 individual hearing aid, right?

17 You know, if you look at -- you
18 know, if you look at paragraph 11, somewhere
19 it says, "A corresponding insert device can
20 also determine here that the hearing aid is
21 located in the storage box so that the
22 hearing aid is switched off automatically.
23 It is also possible for the same circuit
24 device to remain active even when it is
25 switched off, which also enables the relevant

1 hearing aid to be switched on again
2 automatically after it has been removed from
3 the storage box. "

4 So to answer Mr. Efram's question,
5 or maybe just for me to make a comment, when
6 I read this passage, my understanding is this
7 talks about the operation for one hearing aid
8 device.

9 Q Paragraph 11 starts by talking
10 about hearing aids in plural, correct?

11 A That's correct. That's what the --
12 the first sentence says, right, but if you
13 look at the entirety, going down, they start
14 to talk about a single hearing aid device.

15 Q Paragraph 11 in Hain is agnostic on
16 which hearing aid it's talking about,
17 correct?

18 A That's my understanding.

19 Q So you agree that it doesn't matter
20 which one of the two hearing aids gets
21 removed from the storage box in paragraph 11,
22 correct?

23 A I think that's correct. It doesn't
24 say which one, but it just talks about one.

25 Q So when either one gets removed

1 from the storage box, the relevant one gets
2 switched on, correct?

3 A I think that's correct.

4 I mean, that's how -- how a person
5 of ordinary skill in the art will understand
6 the meaning of the sentence.

7 Q And by "switched on," you
8 understand that Hain is talking about the
9 normal mode in Figure 2, correct?

10 A Just to be clear, right, when you
11 look at the Figure 2 and you look at what
12 I've stated in my report, I talk about Hain
13 teaches or discloses three -- let's say three
14 modes, right?

15 One is the normal mode. The other
16 one is a telephone mode, and there's another
17 mode we call the hearing off mode that is a
18 low power mode, okay? So there are three
19 modes.

20 And just look at the flowchart,
21 right? You know, when it's -- when it's
22 switched on, it's switched on. You come to
23 the top box, right, the upper hand left
24 corner, it asks whether the magnetic field is
25 detected or not, okay? So if there's no

1 magnetic field, then it goes into a normal
2 mode.

3 So it seemed to me, just by looking
4 at the flowchart, once you switch to on,
5 there's another level of logic, right, at the
6 very top, asks whether there is a magnetic
7 field or not, right?

8 If there's a magnetic field, then I
9 ask what happened to the other hearing aid,
10 okay? If there's no magnetic field, then go
11 into the normal mode.

12 Q Okay. You agree the one hearing
13 aid that gets removed on the top of the
14 storage box in paragraph 11, it gets switched
15 on and then enters the normal mode, correct?

16 A Just to be technically correct,
17 when you look at a switch on, I assume you're
18 looking at the box at the bottom, right?

19 At the very bottom there is a box
20 that says "switch on," if I'm not mistaken,
21 yes, lower right-hand corner, that's the box
22 that says "switched on."

23 So at switched on, it didn't go
24 into the normal mode directly, right? It
25 kind of lost power and it asked the question,

1 what happened to the magnetic field.

2 If the magnetic field is not
3 present, then it goes into the -- it goes
4 into the normal mode. That's my
5 understanding.

6 Q You were just talking about the
7 first hearing aid.

8 Now, think about the second hearing
9 aid getting switched on and it's taken out of
10 that storage box. That second hearing aid
11 goes into a normal mode as well, correct?

12 A Just to be fair, I think like what
13 you said, the second hearing aid, right?
14 If -- if it's taken out of the storage box,
15 it detects no magnetic field, it's switched
16 to on.

17 But whether it goes to the normal
18 mode or not, you still have to go through the
19 top logic box, right, whether there's a
20 magnetic field or not.

21 Q Yes.

22 A And then it automatically goes in
23 there, right? So it asks whether there's a
24 magnetic field or not, right?

25 If there's no magnetic field, then

1 it goes to the normal mode. If there's a
2 magnetic field, it asks, what happened to the
3 other.

4 I think that -- that -- if you look
5 at the -- if you look at the entire
6 flowchart, right, it is not just between on
7 and off, you know, a -- a low power mode or
8 normal mode. It is trying to also determine
9 whether the person who is wearing the hearing
10 aid is making a phone call or not, right?

11 That's what -- that's -- to me,
12 that's what that flowchart covers, and it's
13 important to recognize that, right? It is
14 not just about low power mode in a normal
15 mode. There's another mode in there. It's a
16 telephone mode.

17 Q Dr. Young, I'm being very clear.

18 If both hearing aids do not detect
19 a magnetic field, I'm clear that neither one
20 is detecting a magnetic field. It's not in
21 the storage box. It's not close to a
22 telephone. Then they both are in the normal
23 mode, correct?

24 A I think that's correct.

25 Q Thank you.

1 Let's go back to your Declaration
2 in the '853 IPR, which is Exhibit 1 to this
3 deposition and look at paragraph 72 on page
4 43.

5 A Yes, I am done looking at paragraph
6 72.

7 Q In the second sentence in paragraph
8 72 of your Declaration, you say, open quote,
9 "Hain does not disclose powering circuitry of
10 the wireless earpieces utilizing a high power
11 mode in response to detecting a magnetic
12 field is not applied to one of the wireless
13 earpieces as claimed by the proposed
14 substitute Claim 22," end quote.

15 Do you see that?

16 A I see that.

17 Q Your quote in paragraph 72 says,
18 open quote, "One of the wireless earpieces,"
19 end quote, correct?

20 A If I'm not mistaken, in the Amended
21 Claim, in the Amended Claim is the one or
22 more of the -- you know, of the wireless
23 earpieces.

24 I think that's -- if you look at
25 the section talk about Amended Claims, I

1 think that's what is described there.

2 Q So there is a typo in your quote in
3 paragraph 72, correct?

4 A I think that's correct. If -- you
5 know, if I need to be consistent with the
6 Amended Claims, there should be one or more
7 of the wireless earpieces.

8 Q Let's turn to your Declaration, the
9 '014 IPR, which is Exhibit 2 of this
10 deposition, and let's look at paragraph 60 on
11 page 31.

12 A I am at paragraph 60 on page 31.

13 Q In paragraph 60 through 65 of your
14 Declaration in the '014 IPR, you provide your
15 opinion about Hain with respect to substitute
16 claims 14, 15, 18 -- I'm sorry, it's
17 substitute claims 14, 15, 16 and 18, correct?

18 A I think that's what the report
19 says, what the Declaration says, "Substitute
20 claims 14 to 16 and 18."

21 Q Let's look at paragraph 62,
22 starting on page 32.

23 A Can I take a look at that
24 paragraph?

25 Q Yes.

1 I can read the second sentence to
2 you in paragraph 62 of the '014 IPR
3 Declaration.

4 Open quote, "In the present claims,
5 the powering circuitry of the wireless
6 earpieces utilizes a low power mode in
7 response to detecting a magnetic field is
8 applied to one of the wireless earpieces,"
9 and it goes on, end quote.

10 Do you see that?

11 A I see that.

12 Q By present claims in paragraph 62,
13 you mean substitute claims 14 through 16 and
14 18, correct?

15 A I think that's correct.

16 Q Your first quote in paragraph 62
17 says, "One of the wireless earpieces,"
18 correct?

19 A That's what it says, but let me --
20 let me compare to the Amended Claims, because
21 I do not remember the exact wording that goes
22 in to the Amended Claims, but it should be in
23 my report.

24 Can you please refer back to the
25 paragraph that we were just looking at? I

1 just want to compare that to the Amended
2 Claims.

3 Q Paragraph 63.

4 A Thank you.

5 Yeah, I just looked at Claim 14
6 which is the proposed substitute for Claim 1,
7 and in that proposed claim language, it does
8 say, "Powering circuitry of the in-ear
9 wireless earpiece utilizing a low power mode
10 in response to detecting a magnetic field is
11 applied to one or more of the in-ear wireless
12 earpiece."

13 Yeah, so to be consistent, if you
14 come back to my paragraph 62, instead of
15 saying one of the wireless earpieces, it
16 should be one or more of the wireless
17 earpieces.

18 Q So that is a typo in paragraph 62
19 of your Declaration, correct?

20 A That's correct. It should be one
21 or more, just to be consistent with the
22 Amended Claims.

23 Q You agree that no knowledge of the
24 substitute claims in each of the IPRs at
25 issue recite one of the wireless earpieces?

1 A Can you -- I'm not sure I
2 understand what you just said.

3 Can you please repeat that again?

4 Q Do you agree that none of the
5 substitute claims recite one of the wireless
6 earpieces?

7 A If I'm not mistaken -- but again, I
8 don't want to kind of speak based upon my
9 memory, right?

10 If you look at the Amended
11 Claims -- and if I'm not mistaken, the
12 Amended Claims require one or more. That's
13 my understanding.

14 Q Let's turn to your Declaration in
15 the '688 IPR, which is Exhibit 3 for this
16 deposition, and let's take a look at
17 paragraph 59 on page 30.

18 A Okay. I am at paragraph 59 on page
19 30.

20 Q In paragraph 59, the second
21 sentence, you say, quote, "Claims 1, 2 and 4
22 correspond to proposed substitute Claims 15,
23 17 and 19 respectively," end quote.

24 Do you see that?

25 A I see that.

1 Q 15, 17 and 19 should be 15, 16 and
2 18, correct?

3 A Let me double check.

4 I cannot get what you said because
5 I'm off by one. You know, if it's 1 and 2
6 and it starts at 15, it needs to be 16, but
7 just let me take a look.

8 Yeah, the old Claim 2 would become
9 or becomes the -- you can call it new Claim
10 16, which is the proposed substitute for
11 Claim 2. And the old Claim 4, the original
12 Claim 4 should become Claim 18, right? That
13 is the substitute of Claim 4.

14 So if you look at the paragraph 59,
15 right, the second sentence, it should read as
16 Claims 1, 2, 4 correspond to proposed
17 substitute Claims 15, 16 and 18,
18 respectively.

19 Q Thank you.

20 Let's take a look at paragraph 61,
21 starting on page 32.

22 A All right. I'm at paragraph 61,
23 page 32.

24 Q Take a moment and read it, Dr.
25 Young, and let me know if you see the same

1 typo about one instead of one or more.

2 A Okay, I'll do that.

3 (Witness reviewing.)

4 A Yeah, I notice that in paragraph
5 61, on page 32, right, my report states,
6 "Powering circuitry of the wireless earpieces
7 utilizing a high power mode in response to
8 detecting a magnetic field is now applied to
9 one of the wireless earpieces."

10 And then if I look at the Amended
11 Claim, which is Claim 15, that is the
12 proposed substitute for Claim 1, "The Amended
13 Claim requires powering circuitry of the
14 in-ear wireless earpieces utilizing a high
15 power mode in response to detecting a
16 magnetic field is not applied to one or more
17 of the in-ear wireless earpieces."

18 So to be consistent with the
19 Amended Claim language, paragraph 61 should
20 use one or more of the wireless earpieces
21 instead of one of the wireless earpieces.

22 Q So the same typo does appear in
23 paragraph 61, correct?

24 A That's correct. It should -- it
25 should have been one or more of instead of

1 one of.

2 Q Okay.

3 MR. ESRAM: Dr. Young, I don't have
4 any more questions for you. So I'll pass you
5 to Mr. Jarrett.

6 MR. JARRETT: Yeah, can we have
7 like 15 minutes or so before we do a brief
8 redirect?

9 MR. ESRAM: Sounds good.

10 MR. JARRETT: Okay.

11 (Brief recess taken.)

12 EXAMINATION BY MR. JARRETT:

13 Q Good afternoon, Dr. Young.

14 Now, you recall Mr. ESRAM asked you
15 about in-ear wireless earpieces.

16 You remember that?

17 A Yes, that's the first part of the
18 deposition.

19 Q And what's your understanding of --
20 of in-ear wireless earpiece or earpieces in
21 light of the product specification for the
22 '853, '014 and '688 patents?

23 A I think I provided that answer --
24 that response before. Let me look at my --
25 let me look at my Declaration.

1 Well, in my report, you know, I
2 talk about in-ear wireless earpieces, right,
3 as something that would fit into the ear,
4 something.

5 If you look at Figure 1, Figure 2,
6 Figure 4 of the patent with the original
7 application for the '853 patent, right, it --
8 it provides a person of ordinary skill in the
9 art of an understanding this is a -- you
10 know, an in-ear wireless earpieces, right?
11 It's earpieces that has a wireless capability
12 and it's earpieces that, you know, I said
13 kind of fit into the ear canal of a user.

14 That -- that is my understanding of
15 what that term means.

16 Q So what if an earpiece had a
17 portion that wrapped around over the top of
18 the ear, would that be considered an in-ear
19 wireless earpiece for the purposes of the
20 claims of these patents and/or the
21 specification?

22 A I heard some background noise.
23 Somebody's talking.

24 Q It's not me.

25 A Okay, yeah.

1 Anyway, yeah -- yeah, that wouldn't
2 be considered, right. That wouldn't be
3 considered as in-ear with the wireless
4 earpiece because you've got something that's
5 behind your ear.

6 Q Do you recall Mr. Efram asking you
7 about the Hain reference?

8 A Yes, we talked about that
9 reference.

10 Q And Dr. Young, could you please
11 pull up Exhibit 5 and turn to, I believe it's
12 Figure 2.

13 A I guess Exhibit 5 is the Hain
14 reference, right?

15 Q Correct.

16 A Yeah, I'm looking at Figure 2 of
17 Exhibit 5.

18 Q And you recall Mr. Efram asking you
19 questions about Figure 2 in the Hain
20 reference?

21 A That's correct. Yeah, we talked
22 about that Figure 2.

23 Q And what is Figure 2?

24 A Figure 2, you know, as I said
25 before in my deposition, is a flowchart,

1 right, talk about the operation of the
2 hearing aid device.

3 Q Now, could you walk me through your
4 understanding of how that flowchart works,
5 starting with the top left corner and the box
6 that says "the magnetic field," question
7 mark?

8 A Okay. I recall I talked about that
9 before, but I'm just going to walk through
10 that again and let you know my -- my
11 understanding of what that flowchart covers.

12 You know, if you look at the first
13 box, right, the upper hand left corner box,
14 they ask whether there's a magnetic field or
15 not.

16 If there's no magnetic field, it
17 enters the normal mode.

18 If there is a magnetic field, it
19 does not enter the normal mode. It goes down
20 to the next level of logic, right? That's
21 the second box below the first box.

22 It asks, magnetic field in other
23 hearing aid, question mark. So it's asking
24 whether the other hearing aid detects the
25 magnetic field or not.

1 If the other hearing aid does not
2 detect the magnetic field, then it enters the
3 telephone mode because the system will
4 understand that.

5 The user, right, is talking on the
6 phone and it detects the magnetic field in
7 one of the hearing aids that the user wears
8 and the other hearing aid does not detect a
9 magnetic field.

10 However, if the other hearing aid
11 also detects a magnetic field, right, that's
12 what I said to Mr. Efram, right, during the
13 deposition, you have the two arrow pointing
14 down. There are two yes along the arrow.

15 So then you're entering the hearing
16 aid off mode, and when you're entering the
17 hearing off mode, and I did not dispute the
18 petitioner's position, the hearing off mode
19 is the low power mode. So in order to get
20 into the low power mode, it requires both
21 hearing aid devices detecting magnetic field.

22 Then once you are in that hearing
23 off mode, it asks the question again if
24 there's a magnetic field or not, right? If
25 there's no magnetic field, it loops around

1 the hearing off mode.

2 If there's no magnetic field, and
3 that's what Mr. Esram asked me, then it
4 switches on. Once it switches on, the logic
5 arrow loops around to the top again and asks
6 is there a magnetic field.

7 If there's no magnetic field, it
8 enters the normal mode. If there is a
9 magnetic field, it goes down again, right,
10 just like the earlier description that I
11 said.

12 Now it asks, what happened to the
13 other hearing aid. If the other hearing aid
14 detects no magnetic field, then it is in the
15 telephone mode, right? Because the system
16 understands that the user, right, is talking
17 on the phone.

18 However, if the other hearing
19 device detects the magnetic field, then they
20 will know how now both hearing aid device
21 detecting magnetic field and now they're in
22 the hearing off mode, that's the low power
23 mode.

24 So this is my understanding of what
25 that flowchart teaches.

1 Q Okay. Now, when you look at this
2 Figure 2, you see different modes.

3 How many modes are there that are
4 represented on this figure, to your
5 understanding?

6 A As I said before, there are three
7 modes, right? As far as I can tell, one is
8 the normal mode, the other one is the
9 telephone mode and the third one is the
10 hearing off mode, which, you know, the
11 petitioner characterized that as the low
12 power mode, and I do not dispute that.

13 Q Now, Dr. Young, when you say the
14 three modes, you mentioned -- let's start
15 with the normal mode.

16 What kind of power mode is the
17 normal mode, to your understanding?

18 A The flowchart as well as the
19 specification does not characterize what kind
20 of power mode it is, right? But when I
21 looked at the -- the teaching of the patent,
22 it is certainly not the same as the hearing
23 aid off mode, which is a low power mode.

24 So it's different from the low
25 power mode because it is not -- I will say

1 it's normal operation, a normal mode, it's
2 normal use. So it is a mode that's different
3 from the low power mode.

4 Q Now, when you say "different from a
5 low power mode," would you -- would you
6 qualify it as a high power mode?

7 MR. ESRAM: Objection, calls for
8 speculation.

9 Q You can answer.

10 A I think that's what -- if I look at
11 the petitioner, I think that's what the
12 petitioner relies on, right, the petitioner
13 relies on that as a high power mode.

14 Q What kind of power mode is the
15 telephone mode?

16 A Yeah, that -- that should be also a
17 high power mode because it has the telephone
18 mode. In the telephone mode, the hearing aid
19 device is -- is functioning as a hearing aid
20 device, right, to enable in an individual
21 wearing the hearing aid to be able to hear
22 the conversation, right? To be able to hear
23 the -- the speech or the talking coming out
24 of the telephone. So that -- that, to me, is
25 also a high power mode.

1 As I said during my deposition,
2 there are three modes in there, right? The
3 normal mode, telephone mode and the hearing
4 off mode. The hearing off mode is a low
5 power mode and the other two modes are
6 different from the hearing off mode. The
7 other two modes are used for the hearing
8 device to serve as a hearing aid, right,
9 under usage.

10 So they -- to me, they -- they
11 dissipate power, and they are high power
12 mode.

13 Q Dr. Young, if you can go to Exhibit
14 1, please. It's your Declaration. I believe
15 it's for the '853 patent.

16 A Yeah, I have that. I have the
17 exhibit with me.

18 Q Could you go to paragraph 72 on
19 page 43?

20 A Yes, I am at paragraph 72 on page
21 43.

22 Q Do you see where it says, Grounds 4
23 and 5 above paragraph 72?

24 A Yes, I do see that.

25 Q I believe Mr. Esram had asked you

1 about this paragraph and the language in this
2 paragraph.

3 Do you recall that?

4 A I recall that.

5 Q And correct me if I'm wrong, but do
6 you recall stating that, if you go to the
7 fourth line down, applied to one of the
8 wireless earpieces, do you see what I'm
9 reading there?

10 A Yes, yes. That should have been
11 one or more of the wireless earpieces.

12 Q Okay. And that correction that you
13 made when Mr. Esram had asked you the
14 question on -- on this paragraph, does that
15 affect your analysis of whether Grounds 4 and
16 5 fail to disclose the -- the Amended Claims,
17 the content of the Amended Claims?

18 A Yeah. If you look at -- if you
19 look at the Claim 1 or the Amended Claim,
20 which is -- let me make sure I get the number
21 right.

22 That will be Claim 22, right, the
23 proposed substitute for Claim 1. And if you
24 look at the proposed substitute Claim 1
25 limitation, there are, you know, a number of

1 limitations, right?

2 You know, it talks about powering
3 circuitry of the in-ear wireless earpieces
4 utilizing a high power mode in response to
5 detecting a magnetic field is not applied to
6 one or more of the in-ear wireless earpieces
7 wherein the powering circuitry is housed
8 within the in-ear wireless earpieces and
9 altering the power sent to the circuitry of
10 the in-ear wireless earpieces to a low power
11 mode in response to detecting a magnetic
12 field is applied to one or more of the in-ear
13 wireless earpieces.

14 And if you look at the flowchart,
15 right, that flowchart does not meet the
16 limitation of that claim, which is altering
17 the power sent to the circuitry of the in-ear
18 wireless earpieces to a low power mode in
19 response to detecting a magnetic field is
20 applied to one or more of the in-ear wireless
21 earpieces.

22 Because, as I stated before, if you
23 look at the flowchart, in order to get to
24 that low power mode, which is the hearing aid
25 off mode, it requires both hearing aid device

1 to detect the magnetic field.

2 But if you look at the claim
3 language, right, the claim language requires
4 detecting a magnetic field is applied to one
5 or more of the in-ear wireless earpieces. So
6 it does not meet that limitation.

7 Q And for grounds 4 and 5, is there
8 any other reason why those grounds fail, in
9 your opinion?

10 MR. ESRAM: Objection.

11 Q You can answer.

12 A Yeah, I just want to look through
13 my Declaration, because I don't want to kind
14 of guess what I said, you know.

15 MR. ESRAM: And my objection was
16 because of out of scope.

17 A Based on the analysis that I
18 performed, right, you know, when I looked at
19 the Hain in terms of the Figure 2 of the
20 flowchart and now if I recall -- let me look
21 at the ground 4 and 5. If I remember
22 correctly, ground 4 and 5, the petitioner
23 relied on both Shaffer and Hain.

24 Let me -- I mean, if you don't
25 mind, can I look at your petition? I just

1 want to make sure I say the right things
2 because there are so many grounds. Each
3 ground is a little different in terms of what
4 reference is there that the petitioners used,
5 but if I remember correctly, ground 4 and 5
6 rely on Shaffer and Hain.

7 And -- and in the petition, as well
8 as in the -- I guess the petitioner's expert
9 report, it talks about Hain, right? They're
10 relying on Hain to disclose a reed switch for
11 implementation of the magnetic sensor.

12 And if you look at Hain, the reed
13 switch taught by Hain operates in the
14 opposite manner compared to the reed switch
15 taught by the '853. And the '853 talks about
16 the reed switch, right? It talks about when
17 the reed switch detects the magnetic field,
18 it opens. When the reed switch does not
19 detect the magnetic field, it closes. And if
20 you look at the reed switch taught by Hain,
21 it does opposite.

22 And I can -- I can maybe read that
23 passage to you somewhere in Hain -- somewhere
24 in Hain. In paragraph 0018 of Hain, that was
25 on page 3 of Hain, if you look at the

1 right-hand side column, right, in the middle
2 of that paragraph, it says that, if the reed
3 switch contacts --

4 (Reporter clarification.)

5 A I'm sorry, let me say it right.

6 "If the reed switch contacts 6 and
7 16, or in the immediate vicinity of a
8 magnetic field whose field strength exceeds a
9 certain threshold value, the reed contact, 6
10 or 16, closes."

11 So it tells you that when you --
12 when you see the -- when you -- when you
13 detect a magnetic field exceeds certain
14 threshold, the switch closes, but whereas in
15 the '853 patent, it talks about the reed
16 switch opens when it detects a magnetic
17 field.

18 So this is an opposite operation,
19 right, opposite teaching of the reed switch,
20 and my understanding is a person of ordinary
21 skill in the art won't be motivated to take
22 combined the Hain with Shaffer for that
23 implementation simply because that switch, it
24 does the opposite operation, right?

25 So to answer your question, is

1 there any other thing that -- that would not
2 meet the limitation, I would say if you look
3 at the petitioner's position, combining
4 Shaffer with Hain for that reed switch
5 implementation, a person of ordinary skill in
6 the art would not be motivated to do that
7 combination because it does something
8 completely opposite with respect to the
9 teaching of the '853 patent for the reed
10 switch operation.

11 Q And Dr. Young, do you recall
12 answering questions just about your
13 Declarations, Exhibits 1 through 3, right?

14 A You asked me a question?

15 Q Yes.

16 I was saying, you recall being
17 asked questions by Mr. Efram about your
18 Declarations, right, Exhibits 1 through 3?

19 A Yes.

20 Q Did you prepare these Declarations
21 to support the Motions to Amend the Claims
22 that had been filed in these IPRs?

23 A I did.

24 Q And do you have an opinion on
25 whether the Amended Claims are patentable

1 over all of the grounds that the petitioner
2 has asserted?

3 MR. ESRAM: Objection, out of
4 scope.

5 A I mean, that's the -- that's the
6 opinion that I set forth in my report, right?
7 I look at Amended Claims and I look at the
8 petitioner's grounds using their side of
9 reference. And my opinions set forth in the
10 report or in my Declaration is that the
11 Amended Claims are patentable over the
12 grounds and the -- the prior art reference
13 the petitioner cite.

14 MR. JARRETT: I have no further
15 questions.

16 I pass the witness.

17 MR. ESRAM: Can we take a
18 five-minute break, please, and we'll come
19 back at the hour.

20 MR. JARRETT: That works.

21 (Brief recess taken.)

22 CONTINUED EXAMINATION BY MR. ESRAM:

23 Q Dr. Young, do you recall Mr.
24 Jarrett asking you about an in-ear wireless
25 earpiece but as a portion going behind the

1 ear?

2 A I recall that.

3 Q And when Mr. Jarrett asked you
4 questions about an in-ear -- I take that
5 back.

6 When Mr. Jarrett asked you
7 questions about that in-ear earpiece that has
8 a portion that goes behind the ear, you
9 testified that it's not an in-ear wireless
10 earpiece, correct?

11 A That's correct.

12 Q You didn't need to know any other
13 additional information about the earpiece,
14 correct?

15 A I do need to know additional
16 information, which is you have a -- you have
17 an external -- maybe a unit, right, an
18 enclosure that goes around your ear. That
19 wouldn't be considered, at least when I look
20 at the specification, in light of
21 specification, look at the claim, it will not
22 be -- it will not be viewed as in-ear
23 wireless earpieces.

24 It will be something considered
25 that's behind the ear, right? I guess that's

1 how a person of ordinary skill in the art
2 would understand.

3 Q You didn't need to know anything
4 about the components of the earpiece,
5 correct?

6 A I do not recall I offered that
7 position in my report, but just to be fair,
8 right, you know, just to meet the limitation,
9 it talks about it requires powering circuitry
10 which is housed in the in-ear wireless
11 earpieces.

12 If you show me something like that,
13 I probably will also need to look at whether
14 the powering circuitry is housed in the
15 in-ear wireless earpieces.

16 Q So just by knowing that there's a
17 portion of the earpiece behind the ear and
18 nothing else, you were able to offer an
19 opinion that it is not an in-ear wireless
20 earpiece, correct?

21 A I think with respect to the context
22 of my report, right, you know, for that
23 particular example, for example, something
24 that's worn behind the -- behind the ear, I
25 was mainly looking at the Brown reference.

1 It talks about you have the -- you
2 know, kind of a hearing aid device that went
3 behind the ear. And I looked at that
4 reference, I looked at the shape, the
5 structure and also drawings indicating -- if
6 you look at the Brown, right, there's a
7 drawing showing a lot of circuitry components
8 that is -- that is packaged, right, inside
9 that package went behind the ear.

10 So that is the -- that is the kind
11 of analysis that I performed.

12 Q But to be clear, I'm asking you
13 about Mr. Jarrett's question to you.

14 All he told you was an earpiece
15 that has something around the ear, and then
16 you didn't need any additional information to
17 come to a conclusion that it is not an in-ear
18 wireless earpiece, correct?

19 A I guess my interpretation of his
20 question or my understanding of his question
21 was he didn't ask me something general,
22 right? He was asking me something perhaps
23 with respect to the analysis that I
24 performed, the opinion that I set forth in my
25 report about something that went behind the

1 ear.

2 And the only thing that I analyzed
3 with the reference with something that goes
4 behind the ear is the Brown reference.
5 That's my understanding.

6 Q So you believe that Mr. Jarrett was
7 asking you about the Brown reference and
8 nothing else, correct?

9 A I believe he was asking me
10 something related to the opinions and
11 analysis set forth in my report.

12 Q And the Brown reference is the only
13 reference with a piece over the ear, correct?

14 A I'm not sure if I will go that far
15 as the only piece, but that -- that's what I
16 remember, you know. That's what I remember
17 the Brown reference talks about, that went
18 behind the ear type of hearing aid.

19 And -- I mean just to be fair, I
20 came across language in maybe other prior art
21 reference talk about in-ear or outer ear.

22 I do not remember the exact
23 wording, but let me answer your question. I
24 think the Brown reference is -- is something
25 that's very clear. I mean, it kind of stands

1 out, out of those reference, that was a
2 picture was drawn showing it has a component
3 that goes behind the ear.

4 MR. ESRAM: Okay. Dr. Young, I
5 don't have any additional questions.

6 Thank you for your time.

7 THE WITNESS: Yeah, thank you.

8 MR. ESRAM: Okay. We can go off
9 the record.

10 MR. JARRETT: Thank you.

11 We don't need to designate
12 anything, right?

13 MR. ESRAM: I don't think so, no.

14 MR. JARRETT: Okay.

15 MR. ESRAM: Thank you.

16 (Whereupon, the deposition was
17 concluded at 3:10 p.m.)

18 (Witness was excused.)
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, CHARLENE FRIEDMAN, a Certified Court Reporter and Notary Public, qualified in and for the State of New Jersey do hereby certify that prior to the commencement of the examination DARRIN YOUNG was duly sworn by me to testify to the truth the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER certify that I am neither a relative of nor employee nor attorney nor counsel for any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



CHARLENE FRIEDMAN, RPR, CRR, CCR of the
State of New Jersey
License No: 30XI00204900
Date: July 15, 2024

1	LAWYER'S NOTES		
2	PAGE	LINE	
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25	_____	_____	_____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION ERRATA SHEET

Case Caption: K/S HIMPP v. BRAGI GmbH

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of
_____, 20____

DARRIN YOUNG

1

DEPOSITION ERRATA SHEET

2

Page No. _____ Line No. _____ Change to: _____

3

4

Reason for change: _____

5

Page No. _____ Line No. _____ Change to: _____

6

7

Reason for change: _____

8

Page No. _____ Line No. _____ Change to: _____

9

10

Reason for change: _____

11

Page No. _____ Line No. _____ Change to: _____

12

13

Reason for change: _____

14

Page No. _____ Line No. _____ Change to: _____

15

16

Reason for change: _____

17

Page No. _____ Line No. _____ Change to: _____

18

19

Reason for change: _____

20

Page No. _____ Line No. _____ Change to: _____

21

22

Reason for change: _____

23

24

SIGNATURE: _____ DATE: _____

25

DARRIN YOUNG

1

DEPOSITION ERRATA SHEET

2

Page No. ____ Line No. ____ Change to: _____

3

4

Reason for change: _____

5

Page No. ____ Line No. ____ Change to: _____

6

7

Reason for change: _____

8

Page No. ____ Line No. ____ Change to: _____

9

10

Reason for change: _____

11

Page No. ____ Line No. ____ Change to: _____

12

13

Reason for change: _____

14

Page No. ____ Line No. ____ Change to: _____

15

16

Reason for change: _____

17

Page No. ____ Line No. ____ Change to: _____

18

19

Reason for change: _____

20

Page No. ____ Line No. ____ Change to: _____

21

22

Reason for change: _____

23

24

SIGNATURE: _____ DATE: _____

25

DARRIN YOUNG